

# General Terms and Conditions

## Lifetime Services

02/2018



### 1. Interpretation

1.1. In these Conditions the following definitions apply:

**Conditions:** the terms and conditions set out in this document.

**Contract:** the contract between the Supplier and the Customer for the supply of services and Spares in accordance with these Conditions.

**Customer:** the person or firm, who purchases the Services, Spares or other goods from the Supplier.

**Customer's Equipment:** any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Customer's Manager:** the Customer's manager for the Services appointed in accordance with clause 7.1.

**Deliverables:** all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services or Spares in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**In-put Material:** all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the Services, Spares or other goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's Proposal.

**Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract, including computer programs, data, reports and specifications.

**Services:** the services to be provided by the Supplier under the Contract as set out in the Supplier's Proposal, together with any other services which the Supplier provides or agrees to provide to the Customer.

**Spares:** the spares provided by the Supplier pursuant to the Contract.

**Supplier:** TGW Ltd (registered in England and Wales with company number 6000337, whose registered office is at Falcon Court, Market Harborough, Leicestershire, LE16 7FQ).

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**Supplier's Manager:** the Supplier's manager for the Services appointed under clause 4.3.

**Supplier's Proposal:** the specification for the provision of Services or the supply of Spares or other goods, including any related plans and drawings, that is produced by the Supplier and forms part of the Contract.

**Transferring Employees:** those employees, whose contract of employment will be transferred to the Customer or a replacement supplier pursuant to the Employment Regulations on expiry or termination of this agreement.

**Transitional Assistance Services:** the services to be provided by the Supplier to the Customer pursuant to clause 13.3 in the event of the expiry or termination of this agreement for any reason to facilitate the transfer of the Services to the Customer or a replacement supplier.

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

1.2. In these Conditions, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

### 2. Basis of Contract

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Customer to purchase the Services and / or Spares or other goods in accordance with these Conditions.

2.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or

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commences delivery of the Services, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties in relation to the Services or Spares. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

### 3. Commencement and duration

3.1. The Supplier shall provide the Services to the Customer from the date specified in the Contract.

3.2. Unless otherwise specified in the Supplier's Proposal the Services supplied under the Contract shall continue to be supplied for a period of 12 months and, after that, shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than 6 months' notice, unless the Contract is terminated in accordance with clause 13.

3.3. After termination the Supplier shall still be obliged to provide Transitional Assistance Services to the Customer for a period of time no greater than 3 months in accordance with clause 13.3.

### 4. Supplier's obligations

4.1. The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables and the Spares to the Customer, in accordance with the Supplier's Proposal in all material respects.

4.2. The Supplier shall use reasonable endeavours to meet any performance dates specified in the Supplier's Proposal, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of the Contract.

4.3. The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Manager throughout the term of the Contract, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

4.4. The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under clause 7.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

### 5. Spares warranty

5.1. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), any Spares supplied shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship.

5.2. Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Spares do not comply with the warranty set out in clause 5.1; and
- (b) the Supplier is given a reasonable opportunity of examining such Spares; and
- (c) the Customer (if asked to do so by the Supplier) returns such Spares to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Spares, or refund the price of the defective Spares in full.

5.3. The Supplier shall not be liable for Spares' failure to comply with the warranty set out in clause 5.1, if:

- (a) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Spares or (if there are none) good trade practice; or
- (b) the Customer alters or repairs such Spares without the written consent of the Supplier; or
- (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

5.4. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Spares' failure to comply with the warranty set out in clause 5.1.

5.5. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

### 6. Title and risk

6.1. The risk in the Spares shall pass to the Customer on completion of delivery.

6.2. Title to the Spares shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Spares; and
- (b) all other sums which are due to the Supplier for sales of the Spares or Services to the Customer.

6.3. Until title to the Spares has passed to the Customer, the Customer shall:

- (a) hold the Spares on a fiduciary basis as the Supplier's bailee;
- (b) store the Spares separately from all other Spares held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Spares;
- (d) maintain the Spares in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

but the Customer may resell or use the Spares in the ordinary course of its business.

6.4. If before title to the Spares passes to the Customer the Customer becomes subject to any of the events listed in clauses 13.1(c) to 13.1(k), or the Supplier

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reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Spares have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Spares and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Spares are stored in order to recover them.

### 7. Customer's obligation

7.1. The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager, who shall have the authority contractually to bind the Customer on matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
- (c) provide, in a timely manner, such In-put Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
- (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment, in all cases before the date on which the Services are to start.

7.2. If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

7.3. The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming

such costs, charges and losses to the Customer in writing.

7.4. The Customer shall not, without the prior written consent of the Supplier or where the transfer is affected automatically by operation of the Employment Regulations, at any time from the date of the Contract to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

7.5. Any consent given by the Supplier in accordance with clause 7.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

### 8. Change control

8.1. The Customer's Manager and the Supplier's Manager shall meet at least once every quarter to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

8.2. If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Supplier's charges arising from the change; and
- (c) any other impact of the change on the Contract.

8.3. If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change and the Contract has been varied in accordance with clause 15.

8.4. Notwithstanding clause 8.3., the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of or the charges for the Services.

8.5. The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 9.

### 9. Charges and Payment

9.1. In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Supplier's Proposal, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 9.3 shall apply, if the Supplier provides Services on a

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- time and materials basis and clause 9.4. shall apply, if the Supplier provides Services for a fixed price. The remainder of this clause 9 shall apply in either case.
- 9.2. The price for the Spares shall be the price set out in the Supplier's Proposal or if not specified there, in the Supplier's published price list in force at the date of delivery.
- 9.3. Where Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's daily fee rates set out in the Supplier's Proposal or as otherwise published and amended from time to time;
  - (b) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
  - (c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 9.3(d); and
  - (d) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 9.3 and clause 9.5.
- 9.4. Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Supplier's Proposal. The Customer shall pay the total price to the Supplier (without deduction or set-off) in instalments, as set out in the Supplier's Proposal on completion or as otherwise specified in the Supplier's Proposal.
- 9.5. Unless otherwise specified in the Contract any price for Spares, fixed price and daily rate contained in the Supplier's Proposal or otherwise excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
  - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 9.6. The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 9.7. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the
- Customer shall pay the interest immediately on demand; and
- (b) suspend all Services until payment has been made in full.
- 9.8. Time for payment shall be of the essence of the Contract.
- 9.9. All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This clause 9.9 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 9.10. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 10. Intellectual property rights**
- 10.1. As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 10.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract is terminated, this licence will automatically terminate.
- 10.2. The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 11. Confidentiality and the Supplier's property**
- 11.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 11.2. The Customer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 11.3. The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 11.
- 11.4. The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

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11.5. All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

### 12. Limitation of liability – the Customer's attention is particularly drawn to this clause

12.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms as to title and the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

12.2. Subject to clause 12.1:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of anticipated savings, loss of use, loss of or corruption of data or information or indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total value of this support contract.

### 13. Termination

13.1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the material terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of

section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

- (d) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
- (f) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- (g) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(c) to clause 13.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

13.2. On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (c) in connection with Transferring Employees the parties shall co-operate to ensure their respective obligations to inform and consult

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- staff and to provide relevant information under the Employment Regulations are fulfilled in due time; and
- (d) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 13.3. Following termination of the Contract for any reason the Supplier shall continue to provide Transitional Assistance Services at the Customer's request for the period specified in clause 3.3. Such services shall be provided on a time-and-materials basis in accordance with the applicable rates set out in the Supplier's Proposal or if none, the Supplier's standard rates.
- 13.4. The Transitional Assistance Services to be provided by the Supplier shall include (without limitation) such of the following services as the Customer may specify:
- (a) providing to the Customer an up-to-date maintenance manual;
- (b) providing details of work volumes and staffing requirements over the preceding 12 months;
- (c) providing appropriate training to those Customer and/or replacement supplier staff responsible for internal training in connection with the provision of the Services;
- (d) providing for transfer to the Customer and/or the replacement supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (e) answering all reasonable questions from the Customer and/or the replacement supplier regarding the Services.
- 13.5. On termination of the Contract (however arising) the following clauses shall survive and continue in full force and effect:
- (a) Clause 6
- (b) clause 10
- (c) clause 11;
- (d) clause 12;
- (e) clause 13 and
- (f) clause 23.
- 14. Force Majeure**
- 14.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms,
- earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 14.2. If the Force Majeure Event prevails for a continuous period of more than 3 months, either party may terminate the Contract by giving 14 days' written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.
- 15. Variation**
- 15.1. Subject to clause 8 no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 16. Waiver**
- 16.1. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17. Severance**
- 17.1. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.
- 17.2. If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 18. Assignment**
- 18.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2. The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.3. Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

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### 19. No partnership or agency

19.1. Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### 20. Rights of third parties

20.1. A person who is not a party to the Contract shall not have any rights under or in connection with it.

### 21. Notices

21.1. Notices:

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 21.1(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 22. Dispute resolution

- 22.1. If any dispute arises in connection with the Contract, the Supplier's Manager and the Customer's Manager shall, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 22.2. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
- 22.3. No party may commence any court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other

party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

### 23. Governing law and jurisdiction

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

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