

A-2-Sea Solutions Limited

Terms & Conditions

(Purchase of Goods & Services – Business to Business)

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Acceptance Conditions	has the meaning given in clause 7.2;
Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Bribery Laws	means the Bribery Act 2010;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Customer	means A-2-Sea Solutions Limited (incorporated in England with company registration number 03223673) whose registered office address is situated at Unit 15 Romsey Industrial Estate, Romsey, Hampshire, S051 0HR, United Kingdom (VAT number GB 679 6405 84);
Conditions	means the Customer's terms and conditions of purchase set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order;
Control	has the meaning given to it in section 1124 of the Corporation Tax Act 2010;
Controller	shall have the meaning given to it in the GDPR;
Data Protection Laws	means any applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including: (a) the GDPR; (b) the Data Protection Act 2018;

- (c) any laws which implement any such laws;
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (e) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);

Data Protection Supervisory Authority means any regulator, authority or body responsible for administering Data Protection Laws;

Data Subject shall have the meaning given in applicable Data Protection Laws from time to time;

Deliverables means the Goods or Services or both as the case may be;

Force Majeure means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce;

GDPR means the General Data Protection Regulation, Regulation (EU) 2016/679;

Goods means the goods and related accessories, spare parts and documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer;

Intellectual Property Rights means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights

	or applications
	(d) whether vested, contingent or future
	(e) to which the relevant party is or may be entitled, and
	(f) in whichever part of the world existing;
International Organisation	shall have the meaning given in the applicable Data Protection Laws from time to time;
Location	means the address(es) for delivery of the Goods and performance of the Services as set out in the Order;
Modern Slavery Policy	means the Customer's anti-slavery and human trafficking policy in force and notified to the Supplier from time to time;
MSA Offence	has the meaning given in clause 11.1.1;
Order	means the Customer's order for the Deliverables as set out in the Customer's order form;
Personal Data	shall have the meaning given in the applicable Data Protection Laws from time to time;
Personal Data Breach	shall have the meaning given in the applicable Data Protection Laws from time to time;
Price	has the meaning given in clause 3.1;
processing	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process , processing , processed , and processes shall be construed accordingly);
Processor	shall have the meaning given in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of the Supplier's obligations under this Contract;
Services	means the services set out in the Order or understood by the parties to be included in the Services and to be supplied by the Supplier to the Customer;

Specification	means the description or specification of the Deliverables set out or referred to in the Order; and
Sub-Processor	means any agent, subcontractor or other third party engaged by the Supplier (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data;
Supplier	means the person who sells the Deliverables to the Customer and whose details are set out in the Order;
Supplier IPR Claim	has the meaning given in clause 15.2;
Supplier Personnel	means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule (if any) or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.2.10 without prejudice to the provisions of clause 17, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of the Customer under the Contract;

1.2.11 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Customer otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.

2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Deliverables subject to these Conditions.

2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. An Order shall lapse unless accepted by the Supplier before the expiry of 10 days after the date of the Order. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.

2.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Order.

3 Price

3.1 The price for the Deliverables shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by the Customer before the date the Order is made (**Price**). No increase in the Price may be made after the Order is placed.

3.2 The Price includes packaging and delivery and any other specified costs identified on the Order or otherwise agreed in writing between the Customer and Supplier.

4 Payment

4.1 The Supplier shall invoice the Customer for: (a) the Goods no sooner than completion of delivery of the Goods or, if later, the Customer's acceptance of the Goods, (b) Services no sooner than completion of performance of the Services or, if later, the Customer's acceptance of the Services.

4.2 The Customer shall pay each validly submitted invoice of the Supplier within 30 days following the end of the calendar month of receipt.

4.3 Time of payment is not of the essence. Where sums due under the Contract are not paid in full by the due date, to compensate the Supplier for all loss from the Customer's breach, the Customer shall pay on the sum overdue interest (before and after judgment) on a weekly basis until payment in full at the rate of 2 per cent per annum above the Official Bank Rate from time to time of the Bank of England. The Supplier acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

4.4 VAT shall be charged by the Supplier and paid by the Customer at the then applicable rate.

5 Cancellation

5.1 The Customer shall have the right to cancel the Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods, delivered to, and in the case of Services, performed for, the Customer.

5.2 In relation to any Order cancelled or part-cancelled under clause 5.1, the Customer shall pay for:

5.2.1 in respect of any Goods, that part of the price which relates to the Goods which at the time of cancellation have been delivered to the Customer; and

5.2.2 in respect of any Goods, the costs of materials which the Supplier has purchased to fulfil the Order for the Goods which cannot be used for other orders or be returned to the Supplier's supplier of those materials for a refund; and

5.2.3 in respect of any Services, 20% of the total cost of the Services already performed at the date of cancellation of the Order.

6 Delivery and performance

6.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on completion of unloading of the Goods at the Location.

The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.

6.2 The Deliverables shall not be delivered by or performed in instalments unless otherwise agreed in writing by the Customer.

6.3 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:

6.3.1 the date of the Order;

6.3.2 the relevant Customer and Supplier details;

6.3.3 if Goods, the product numbers and type and quantity of Goods in the consignment;

6.3.4 if Services, the category, type and quantity of Services performed;

6.3.5 any special instructions, handling and other requests; and

- 6.3.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 6.4 Time of delivery or performance (as the case may be) is of the essence. If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, the Customer shall (without prejudice to its other rights and remedies) be entitled at the Customer's sole discretion:
 - 6.4.1 to terminate the Contract in whole or in part;
 - 6.4.2 to purchase the same or similar Deliverables from a supplier other than the Supplier;
 - 6.4.3 to recover from the Supplier all costs and losses resulting to the Customer, including the amount by which the price payable by the Customer to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
 - 6.4.4 all or any of the foregoing.
- 6.5 If the Customer fails to accept delivery of the Goods on the date or within the period set out in the Order, the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay reasonable storage charges.

7 Acceptance, rejection and inspection

- 7.1 The Customer shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled.
- 7.2 The **Acceptance Conditions** are that:
 - 7.2.1 for Goods, the Goods have been delivered to or at the Location;
 - 7.2.2 for Services, the Services have been performed at the Location; and
 - 7.2.3 the Customer has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the terms and conditions of the Contract.
- 7.3 The Customer shall be entitled to reject any Deliverables which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Deliverables or any payment made in respect thereof, shall not constitute a waiver of any of the Customer's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.4 Any rejected Goods may be returned to the Supplier by the Customer at the Supplier's cost and risk. The Supplier shall pay to the Customer a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.5 The Customer may require acceptance tests to be performed or to be carried out, at the Customer's option, either by the Customer or the Supplier, and the results of the tests shall be made available to the Customer.

- 7.6 The Customer may inspect and test the Deliverables during performance or during manufacture or processing prior to despatch, and the Supplier shall provide the Customer with all facilities reasonably required.
- 7.7 Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Customer's rights and remedies, including its right to reject.
- 7.8 The rights of the Customer in this clause 7 are without prejudice to the Customer's rights under clause 9.

8 Title and risk

- 8.1 Risk in the Goods shall pass to the Customer on delivery and when the Customer has accepted the Goods as conforming in every respect with the Contract.
- 8.2 Title to the Goods shall pass to the Customer on the sooner of: (a) payment by the Customer for the Goods; or (b) delivery of the Goods to the Customer.
- 8.3 The passing of title shall not prejudice any other of the Customer's rights and remedies, including its right to reject.
- 8.4 Neither the Supplier, or any other person, shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which have vested in the Customer or any specifications or materials of the Customer, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.
- 8.5 The Supplier warrants and represents that it:
- 8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Customer; and
- 8.5.2 shall hold such title and right to enable it to ensure that the Customer shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

9 Warranty

- 9.1 The Supplier warrants and represents that, for a minimum period of 24 months from acceptance (such period being extended by up to ten years or more if agreed between the Customer and Supplier in writing) (the **Warranty Period**), the Deliverables shall:
- 9.1.1 conform in all material respects to any sample, their description and to the Specification;
- 9.1.2 be free from defects in design, material and workmanship;
- 9.1.3 comply with all applicable laws, standards and best industry practice;
- 9.1.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.1.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;

- 9.1.6 be fit for purpose and any purpose held out by the Supplier and set out in the Order and as otherwise required to meet the Customer's needs; and
- 9.1.7 any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 The Supplier agrees that the approval by the Customer of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 9.
- 9.3 The Supplier warrants that it understands the Customer's business and needs.
- 9.4 The Customer may reject any Deliverables that do not comply with clause 9.1 and the Supplier shall, at the Customer's option, promptly remedy, repair, replace, correct, re-perform or refund the price of any such Deliverables provided that the Customer serves a written notice on the Supplier within the Warranty Period that some or all of the Deliverables do not comply with clause 9.1.
- 9.5 The provisions of these Conditions shall apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed with effect from the date of the delivery or performance of the remedied, repaired, replaced, corrected or re-performed Deliverables.
- 9.6 The Customer's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in the Supply of Goods and Services Act 1982, s 12 to 16 and the Sale of Goods Act 1979, s 13 to 15.
- 9.7 The Customer shall be entitled to exercise its rights under clause 9 regardless of whether the Deliverables have been accepted under the Acceptance Conditions and notwithstanding that the Deliverables were not rejected following their initial inspection under clause 7.3.

10 Anti-bribery

- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use reasonable endeavours to ensure that:
- 10.2.1 all of that party's personnel;
- 10.2.2 all others associated with that party; and
- 10.2.3 all of that party's subcontractors;
- involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

10.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 10.

11 Anti-slavery

11.1 The Supplier undertakes, warrants and represents that:

11.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

11.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and

11.1.3 it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of the Supplier's obligations under clause 11.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

11.2 Any breach of clause 11.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Customer to terminate the Contract with immediate effect.

12 Anti-tax evasion facilitation

12.1 For the purposes of this clause 12:

12.1.1 the expressions '**associated with**', '**prevention procedures**', '**UK Tax Evasion Offence**' and '**Foreign Tax Evasion Offence**' shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 (**CFA 2017**) and guidance published under it;

12.1.2 **Corporate Failure to Prevent Offence** means an offence under section 45 and/or section 46 of CFA 2017 and any other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to preventing the facilitation of tax evasion and any similar or equivalent laws in any other relevant jurisdiction;

12.1.3 **Supplier Associated Persons** means all or any of the following:

- (a) persons associated with the Supplier (**Supplier's Associates**); and
- (b) persons associated with any of the Supplier's Associates;

in each case, involved in performing services for or on behalf of the Supplier in connection with the Services and this Contract.

12.2 The Supplier shall ensure that it and the Supplier Associated Persons shall not by any act or omission commit, or cause, facilitate or contribute to the commission by any person including the Customer, of a:

12.2.1 Corporate Failure to Prevent Offence;

12.2.2 UK Tax Evasion Offence; or

12.2.3 Foreign Tax Evasion Offence

in connection with the performance of the Services and this Contract.

12.3 The Supplier shall not, and shall use all reasonable endeavours to ensure that Supplier Associated Persons shall not, solicit or engage with or take steps to solicit or engage with any person associated with the Customer to facilitate the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the performance of the Services and this Contract.

12.4 The Supplier shall, and shall procure that Supplier Associated Persons shall, pay, in full and in a timely manner, all taxes due and payable relating to all monies, remuneration, profit and value received or payable by the Supplier or any Supplier Associated Persons in connection with the performance of the Services or with this Contract.

12.5 Without prejudice to clause 12.2, the Supplier shall ensure that:

12.5.1 it and all relevant Supplier Associated Persons have in place such **prevention procedures** as it is reasonable in all the circumstances to expect the Supplier and such persons to have in place to prevent any breach of this clause 12; and

12.5.2 its own policies and other prevention procedures and those of relevant Supplier Associated Persons are endorsed by the Supplier or relevant Supplier Associated Person's top-level management and include clear written guidance and training to each of the Supplier Associated Persons involved in providing the Services or with this Contract.

12.6 Without limitation to clauses 12.2, 12.3, 12.4 and 12.5 above, the Supplier shall:

12.6.1 ensure that all Supplier Associated Persons involved in providing the Services or with this Contract have been vetted and that due diligence has been undertaken to such standard or level of assurance as is reasonably necessary in relation to a person in that position in the relevant circumstances;

12.6.2 maintain accurate and up to date records of:

- (a) any requests to facilitate any UK Tax Evasion Offence or any Foreign Tax Evasion Offence made to the Supplier or any Supplier Associated Person in connection with the Services or with this Contract either in the United Kingdom or elsewhere;
- (b) any action taken by the Supplier to inform the relevant enforcement bodies or regulatory authorities that the Supplier or any Supplier Associated Person has been requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence (except to the extent that the Supplier is prevented by law from doing so);
- (c) its compliance with its obligations under this clause 12 and all training and guidance provided to Supplier Associated Persons in respect of the obligations under this clause and applicable laws for the prevention of tax evasion;
- (d) the Supplier's monitoring of compliance by Supplier Associated Persons with the applicable policies and procedures as required by clause 12.5;

- (e) the measures that the Supplier has taken in response to any incidence of suspected or actual tax evasion or facilitation of tax evasion or breach of this clause 12.
- 12.6.3 maintain and provide such access to the records or information referred to in clause 12.6.2 in accordance with its obligations in; and
- 12.6.4 ensure all Supplier Associated Persons involved in performing services in connection with this Contract are subject to and at all times comply with equivalent obligations to the Supplier's under this clause 12.
- 12.7 The Supplier warrants and represents that it has not, and to the best of its knowledge, information and belief, no Supplier Associated Persons have:
 - 12.7.1 been investigated in connection with, or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence;
 - 12.7.2 received any court orders, warrants, oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence; or
 - 12.7.3 received any report (including a report from the Supplier's external auditors, any Supplier Associated Persons or any other person) or discovered any evidence suggesting that the Supplier or any Supplier Associated Person has committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence.
- 12.8 The Supplier shall immediately notify the Customer as soon as it becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in this clause 12.
- 12.9 Any breach of this clause 12 by the Supplier shall be deemed a material breach of this Contract that is not remediable and entitle the Customer to immediately terminate this Contract by notice under clause 19.1.1.

13 Indemnity and insurance

- 13.1 The Supplier shall indemnify, and keep indemnified, the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with the Supplier's breach of any of the Supplier's obligations under the Contract.
- 13.2 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Deliverables and any of the Customer's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Customer, and insuring against all other risks that a prudent supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Customer the benefit of such insurance.

14 Limitation of liability

- 14.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.
- 14.2 Subject to clauses 14.5 and 14.7, the Customer's total liability shall not exceed the Price.
- 14.3 Subject to clauses 14.5 and 14.7, the Customer shall not be liable for consequential, indirect or special losses.
- 14.4 Subject to clauses 14.5 and 14.7, the Customer shall not be liable for any of the following (whether direct or indirect):
- 14.4.1 loss of profit;
 - 14.4.2 loss of or corruption to data;
 - 14.4.3 loss of use;
 - 14.4.4 loss of production;
 - 14.4.5 loss of contract;
 - 14.4.6 loss of opportunity;
 - 14.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 14.4.8 harm to reputation or loss of goodwill.
- 14.5 The limitations of liability set out in clauses 14.2 to 14.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 14.6 Except as expressly stated in the Contract, and subject to clause 14.7, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law in respect of the Customer (but not in respect of the Supplier).
- 14.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 14.7.1 death or personal injury caused by negligence;
 - 14.7.2 fraud or fraudulent misrepresentation;
 - 14.7.3 any other losses which cannot be excluded or limited by applicable law;
 - 14.7.4 any losses caused by wilful misconduct.

15 Intellectual property rights

- 15.1 All specifications provided by the Customer and all Intellectual Property Rights in the Deliverables made or performed in accordance with such specifications shall vest in and remain at all times the property of the Customer and such specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the

assignment) to the Customer absolutely, with full title guarantee, all rights, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Customer's opinion to so vest all such Intellectual Property Rights in the Customer, and to enable the Customer to defend and enforce such Intellectual Property Rights.

15.2 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that use or possession of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party (a **Supplier IPR Claim**).

15.3 If any Supplier IPR Claim is made or is reasonably likely to be made against the Customer, the Supplier shall promptly and at its own expense either:

15.3.1 procure for the Customer the right to continue using and possessing the relevant Intellectual Property Rights; or

15.3.2 modify or replace the infringing part of the Intellectual Property Rights and without adversely affecting the functionality of the Intellectual Property Rights as set out in the Contract so as to avoid the infringement or alleged infringement,

provided that if, having used reasonable endeavours, neither of the above can be accomplished on reasonable terms, the Supplier shall (without prejudice to the indemnity above) refund the price paid by the Customer in respect of the affected Intellectual Property Rights.

16 Confidentiality and announcements

16.1 The Supplier shall keep confidential all Confidential Information of the Customer and of any Affiliate of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

16.1.1 subject to clause 16.4, any information which was in the public domain at the date of the Contract;

16.1.2 subject to clause 16.4, any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

16.1.3 subject to clause 16.4, any information which is independently developed by the Supplier without using information supplied by the Customer or by any Affiliate of the Customer; or

16.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

16.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.

16.3 Subject to clause 16.4, the Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

16.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with the provisions of clause 17.

17 Processing of personal data

17.1 Unless otherwise expressly stated in this Contract:

17.1.1 the Supplier's obligations and the Customer's rights and remedies under this clause 17 are cumulative with, and additional to, any other provisions of this Contract; and

17.1.2 this clause 17 shall prevail over any other provision of this Contract in the event of any conflict.

17.2 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to this Contract. The Supplier shall, and shall ensure its Sub-Processors and each of the Supplier Personnel shall, at all times comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the Services and shall not by any act or omission cause the Customer (or any other person) to be in breach of any of the Data Protection Laws. Nothing in this Contract relieves the Supplier of any responsibilities or liabilities under Data Protection Laws.

17.3 The Supplier shall indemnify and keep indemnified the Customer against:

17.3.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Supplier of its obligations under this clause 17; and

17.3.2 all amounts paid or payable by the Customer to a third party which would not have been paid or payable if the Supplier's breach of this clause 17 had not occurred.

17.4 The Supplier shall only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with clause 17, this Contract and the Customer's written instructions from time to time (including when making any transfer to which clause 17.9 relates) except where otherwise required by applicable law (and in such a case shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest). The Supplier shall immediately inform the Customer if any instruction relating to the Protected Data infringes or may infringe any Data Protection Law.

17.5 The Supplier shall at all times implement and maintain appropriate technical and organisational measures to protect Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access. Such technical and organisational measures shall be at least equivalent to the technical and organisational measures expected from a supplier supplying similar goods and services and shall reflect the nature of the Protected Data.

17.6 The Supplier shall:

- 17.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its own employees that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written authorisation of that Sub-Processor by the Customer and only then subject to such conditions as the Customer may require;
- 17.6.2 ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Services;
- 17.6.3 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a binding written contract containing the same obligations as under this clause 17 in respect of Protected Data that (without prejudice to, or limitation of, the above):
 - (a) includes providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing of the Protected Data will meet the requirements of all Data Protection Laws; and
 - (b) is enforceable by the Supplier,and ensure each such Sub-Processor complies with all such obligations.
- 17.6.4 remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor and each of the Supplier Personnel as if they were its own; and
- 17.6.5 ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are reliable and:
 - (a) adequately trained on compliance with this clause 17 as applicable to the processing;
 - (b) informed of the confidential nature of the Protected Data and that they must not disclose Protected Data;
 - (c) subject to a binding and enforceable written contractual obligation to keep the Protected Data confidential; and
 - (d) provide relevant details and a copy of each agreement with a Sub-Processor to the Customer on request.
- 17.7 The Supplier shall (at its own cost and expense):
 - 17.7.1 promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as the Customer may require in relation to the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws); and
 - 17.7.2 provide such information, co-operation and other assistance to the Customer as the Customer requires (taking into account the nature of processing and the information available to the Supplier) to ensure compliance with the Customer's obligations under Data Protection Laws, including with respect to:
 - (a) security of processing;
 - (b) data protection impact assessments (as such term is defined in Data Protection Laws);

- (c) prior consultation with a supervisory authority regarding high risk processing; and
 - (d) any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or any complaint or request relating to either party's obligations under Data Protection Laws relevant to this Contract, including (subject in each case to the Customer's prior written authorisation) regarding any notification of the Personal Data Breach to supervisory authorities and/or communication to any affected Data Subjects.
- 17.8 The Supplier shall (at no cost to the Customer) record and refer all requests and communications received from Data Subjects or any Supervisory Authority to the Customer which relate (or which may relate) to any Protected Data promptly (and in any event within [*three days*] of receipt) and shall not respond to any without the Customer's express written approval and strictly in accordance with the Customer's instructions unless and to the extent required by law.
- 17.9 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the [*United Kingdom*] or to any International Organisation without the prior written consent of the Customer (which may be refused or granted subject to such conditions as the Customer deems necessary).
- 17.10 The Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer. Such records shall include all information necessary to demonstrate its and the Customer's compliance with this clause 17, the information referred to in Articles 30(1) and 30(2) of the GDPR and such other information as the Customer may reasonably require from time to time. The Supplier shall make copies of such records available to the Customer promptly (and in any event within 7 days) on request from time to time.
- 17.11 The Supplier shall (and shall ensure all Sub-Processors shall) promptly make available to the Customer (at the Supplier's cost) such information as is required to demonstrate the Supplier's and the Customer's compliance with their respective obligations under this clause 17 and the Data Protection Laws, and allow for, permit and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose at the Customer's request from time to time. The Supplier shall provide (or procure) access to all relevant premises, systems, personnel and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice (not being more than [*two*] Business Days) and provide and procure all further reasonable co-operation, access and assistance in relation to any such audit or inspection.
- 17.12 The Supplier shall promptly (and in any event within 24 hours):
 - 17.12.1 notify the Customer if it (or any of its Sub-Processors or the Supplier Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data; and
 - 17.12.2 provide all information as the Customer requires to report the circumstances referred to in clause 17.12.1 to a Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.
- 17.13 The Supplier shall (and shall ensure that each of the Sub-Processors and Supplier Personnel shall) immediately, at the Customer's written request, either securely delete or securely return all the Protected Data to the Customer in such form as the Customer reasonably requests after the earlier of:

17.13.1 the end of the provision of the relevant Services related to processing of such Protected Data; or

17.13.2 once processing by the Supplier of any Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under this Contract,

and securely delete existing copies (except to the extent that storage of any such data is required by applicable law and, if so, the Supplier shall inform the Customer of any such requirement).

17.14 This clause 17 shall survive termination or expiry of this Contract for any reason.

17.15 The Supplier shall perform all its obligations under this clause 17 at no cost to the Customer.

18 Force majeure

18.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

18.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

18.1.2 uses best endeavours to minimise the effects of that event.

18.2 If, due to Force Majeure, a party:

18.2.1 is or shall be unable to perform a material obligation; or

18.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days;

the other party may, within 30 days, terminate the Contract on immediate notice.

19 Termination

19.1 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if:

19.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;

19.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;

19.1.3 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

19.2 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

19.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

- 19.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;
- 19.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 19.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 19.2.5 has a resolution passed for its winding up;
- 19.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 19.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within [seven] days of that procedure being commenced;
- 19.2.8 has a freezing order made against it;
- 19.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- 19.2.10 is subject to any events or circumstances analogous to those in clauses 19.2.1 to 19.2.9 in any jurisdiction;
- 19.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 19.2.1 to 19.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 19.3 The Customer may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 19.4 The right of the Customer to terminate the Contract pursuant to clause 19.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 19.5 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 19, it shall immediately notify the Customer in writing.
- 19.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Customer at any time up to the date of termination.
- 20 Dispute resolution**
- 20.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 20.

- 20.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 20.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 20.3.1 Within seven days of service of the notice, the contract managers of the parties shall meet in person (if reasonably practicable to do so) to discuss the dispute and attempt to resolve it but if meeting in person is not logistically reasonable due to the cost or distance of travel the contract managers may use a more appropriate medium to discuss the dispute including but not limited to conference calling.
- 20.3.2 If the dispute has not been resolved within seven days of the first meeting of the contract managers, then the matter shall be referred to the managing directors (or persons of equivalent seniority). The managing directors (or equivalent) shall meet in person (if reasonably practicable to do so) within seven days to discuss the dispute and attempt to resolve it but if meeting in person is not logistically reasonable due to the cost or distance of travel the managing directors may use a more appropriate medium to discuss the dispute including but not limited to conference calling.
- 20.4 The specific format for the resolution of the dispute under clause 20.3.1 and, if necessary, clause 20.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 20.5 If the dispute has not been resolved within 14 days of the first meeting of the managing directors (or equivalent) under clause 20.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 20.6 Until the parties have completed the steps referred to in clauses 20.3 and 20.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

21 Notices

- 21.1 Any notice given by a party under these Conditions shall:
- 21.1.1 be in writing and in English;
- 21.1.2 be signed by, or on behalf of, the party giving it
- 21.1.3 be sent to the relevant party at the address set out in the Contract
- 21.2 Notices may be given, and are deemed received:
- 21.2.1 by hand: on receipt of a signature at the time of delivery;
- 21.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 21.2.3 by Royal Mail International Tracked & Signed OR Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and

21.2.4 by email on receipt of a delivery email from the correct address set out in the Contract.

21.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 21.1 and shall be effective:

21.3.1 on the date specified in the notice as being the date of such change; or

21.3.2 if no date is so specified, two Business Days after the notice is deemed to be received.

21.4 All references to time are to the local time at the place of deemed receipt.

21.5 This clause does not apply to notices given in legal proceedings or arbitration.

22 Cumulative remedies

The rights and remedies provided in the Contract for the Customer only are cumulative and not exclusive of any rights and remedies provided by law.

23 Time

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Supplier's obligations only.

24 Further assurance

The Supplier shall at the request of the Customer, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

25 Entire agreement

25.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

25.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

25.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

26 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Customer.

27 Assignment

27.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent, which it may withhold or delay at its absolute discretion.

27.2 Notwithstanding clause 27.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Customer prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

28 Set off

28.1 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier.

28.2 The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

29 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

30 Equitable relief

The Supplier recognises that any breach or threatened breach of the Contract may cause the Customer irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Customer, the Supplier acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

31 Severance

31.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

31.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

32 Waiver

32.1 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

32.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Customer shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Customer.

33 Compliance with law

The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

34 Conflicts within contract

34.1 If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes (if any) to the Contract, the terms of the Conditions shall prevail.

34.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

35 Costs and expenses

The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

36 Third party rights

36.1 Except as expressly provided for in clause 36.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

36.2 Any Affiliate of the Customer shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

37 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

38 Jurisdiction

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).