

1. DEFINITIONS AND INTERPRETATIONS

1.1. In these Conditions, the following definitions apply:

- 1.1.1. **“AUP”** means the Acceptable Use Policy in force from time to time which governs use of any Supplier System and a copy of which is available on the Supplier’s website.
- 1.1.2. **“Bespoke Products”** means any Products or parts of Products made or customised specifically for the Customer using the Customer Information.
- 1.1.3. **“Charges”** means the charges payable under a Contract for the Products, Services or Software.
- 1.1.4. **“Conditions”** means these terms and conditions as updated from time to time.
- 1.1.5. **“Confidential Material”** means in any form, commercial, financial or technical information which is marked as confidential or by its nature confidential and includes specifications, personal data, suppliers, customers, information relating to the Products, Software, Supplier System or Services including IPR, invention, processes or initiatives or other plans, know-how or trade secrets or any of the above which is developed by the Supplier in performing its obligations under, or otherwise pursuant to the Contract.
- 1.1.6. **“Contract”** means the contract formed with the Supplier’s acceptance of the purchase order of the Customer in accordance with Conditions 2.4 and 2.5.
- 1.1.7. **“Customer”** means the person, firm or company who purchases Products, Software, and/or Services from the Supplier.
- 1.1.8. **“Customer Information”** means the Customer’s bespoke specifications for the Products, including drawings, documentation, data, software, materials, information and know how to be provided by the Customer.
- 1.1.9. **“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 incorporating the UK General Data Protection Regulation as amended together with all other legislation and regulatory requirements in force from time to time which apply to a party and relating to the use of personal data.
- 1.1.10. **“EULA”** means the End User Licence Agreement in respect of Software to be entered into by all users of the Software (including the Customer).
- 1.1.11. **“Intellectual Property Rights” or “IPR”** means intellectual property rights of every sort, whether or not registered or registrable in any country, including intellectual property rights now existing or coming into existence in the future; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, rights in computer software and databases (including the Software), domain names, discoveries, know-how such technical and commercial know-how including methods, procedures and ways of working and organising whether or not they are

capable of being protected as copyright or other types of intellectual property, creations and inventions, together with all rights which are derived from those rights.

- 1.1.12. **“Products”** means the Supplier’s products and includes any part or parts of any Supplier products, any Bespoke Products, and replacements and spare parts plus any physical media that is provided for Software or documentation.
- 1.1.13. **“Product Specification”** means the specification for the Product provided in writing by the Supplier;
- 1.1.14. **“Services”** means the services provided by the Supplier as detailed in the relevant Customer’s purchase order and agreed to be supplied by the Supplier under the Contract.
- 1.1.15. **“Service Specification”** means the specification for the Services including any service levels provided in writing by the Supplier.
- 1.1.16. **“Software”** means any software supplied to the Customer under the Contract or as part of any Product or independently provided to the Customer whether under these Conditions or a separate agreement and whether for a separate charge or price or included as part of charge or price for the Product.
- 1.1.17. **“Software Specification”** means the specification for the Software provided in writing by the Supplier.
- 1.1.18. **“Supplier”** means Global Inkjet Systems Ltd and its assigns or successors in title.
- 1.1.19. **“Supplier System”** means such software and applications that are made available to Customers to enable the Supplier to provide the Services or make Software available for download.

1.2. In these Conditions, the following rules apply:

- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its successors or permitted assigns;
- 1.2.3. a reference to a statute or a statutory provision is a reference to such statute or statutory provision at the date of the Contract. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision;
- 1.2.4. any phrase introduced by the terms **‘including’**, **‘include’**, **‘in particular’**, **“for example”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5. a reference to writing or written includes faxes, e-mails, and messaging platforms; and
- 1.2.6. these Conditions shall apply to the supply of Products, Software and Services unless specified otherwise.

2. CONTRACT TERMS, QUOTATIONS AND ACCEPTANCE AND CHANGES

- 2.1. These Conditions shall apply to and be incorporated into the Contract and shall prevail over any terms or conditions contained in or referred to in the Customer's purchase order, confirmation or acknowledgment of order, specification or other document issued by or on behalf of the Customer, or any terms or conditions implied by law, trade custom, practice or course of dealing. Additional or alternative terms may be agreed in relation to a specific Contract only where expressly agreed in writing by an authorised representative of the Supplier in accordance with Condition 2.2. For the avoidance of doubt, no terms or conditions contained in any purchase order or other document issued by the Customer shall vary or take precedence over these Conditions merely because such document is issued after these Conditions or after any quotation or proposal issued by the Supplier.
- 2.2. No addition to, variation of, exclusion or attempted exclusion of any term or condition of the Contract shall be binding on the Supplier unless in writing and signed off by an authorised representative of the Supplier.
- 2.3. Any quotation or proposal issued by the Supplier is valid for a period of 30 days only from the date of the quotation or proposal, and the Supplier may withdraw it at any time by notice to the Customer.
- 2.4. Each purchase order for Products, Software and/or Services by the Customer shall be deemed to be an offer by the Customer to purchase Products, Software, and/or Services in accordance with these Conditions. The Customer shall ensure that its purchase order is complete and accurate. Any quotation or proposal by the Supplier is not an offer by the Supplier capable of acceptance and is deemed to be an invitation to treat only. The Supplier reserves the right to make minor, non-material amendments to the Customer's purchase order prior to acceptance, for example to correct incorrect product codes or minimum purchase quantities. The quantity and description of the Products, Software or Services shall be as set out in the Supplier's acknowledgment of order.
- 2.5. The Supplier's acceptance of the offer to purchase the Products, Software or Services will be the earliest of:
- 2.5.1. the Supplier's written acknowledgment of the Customer's purchase order;
 - 2.5.2. the Supplier processes the purchase order by inputting the same on to their systems; or
 - 2.5.3. the Supplier delivers the Products or Software or commences provision of the Services to the Customer.

- 2.6. Upon acceptance of the Customer's offer by the Supplier in accordance with Condition 2.5, the Contract shall become binding on the Customer and may not be amended, varied, or cancelled by the Customer without the Supplier's prior written consent. Any cancellation or variation by the Supplier shall be subject to the provisions of these Conditions.
- 2.7. The Supplier is under no obligation to accept any purchase order submitted by the Customer. Following acceptance of a purchase order in accordance with Condition 2.5, the Supplier may cancel the Contract at any time prior to delivery by giving written notice to the Customer. In the event of such cancellation, the Supplier shall refund any Charges paid by the Customer in respect of Products, Software or Services not delivered or provided and shall have no further liability to the Customer arising from such cancellation.
- 2.8. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Products, Software or Services or illustrations or descriptions of them contained in the Supplier's catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Products, Software and/or Services described in them. They shall not form part of the Contract or have any contractual force. This does not affect the Customer's rights for any fraudulent misrepresentation.

3. CHARGES

- 3.1. The Charges for the Products, Software and for the Services are as set out in the Supplier's quotation or proposal or shall be confirmed in the order acknowledgment.
- 3.2. Charges are exclusive of value added tax, bank charges, export costs, transportation costs, excise duty, import duty or other tax charged or imposed by the country of importation and any other imports and duties payable in respect of the Product, Software, and/or Services. Unless agreed otherwise in writing, any such taxes, imports or duties and any other sums due to the Supplier shall be payable by the Customer in addition to the Charges.
- 3.3. All expenses such as travel, accommodation and subsistence will be payable by the Customer. The Supplier will notify the Customer of any additional expenses in advance, and such expenses will be invoiced separately. The Supplier has the right to add an administrative charge of no less than 10% of the total expenses which shall be payable by the Customer upon demand.
- 3.4. Where the Supplier agrees to provide the Customer with import/export assistance, the Supplier's costs and expenses will be charged to the Customer at cost. Further, the Supplier has the right to add an administrative charge of no less than 10% of its costs and expenses, which shall be payable by the Customer upon demand.

- 3.5. The Supplier reserves the right upon notice at any time before delivery, to increase the Charges of such of the Products, Software and/or Services as have not been delivered in any of the following circumstances and shall incur no liability in doing so:
- 3.5.1. if there is any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including any foreign exchange fluctuation, currency regulation, alteration of tariffs, duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture),
 - 3.5.2. if there are any changes requested by the Customer in delivery dates, quantities or specifications for the Products, Software or Services, or
 - 3.5.3. if there is a failure or delay of the Customer to give the Supplier complete, adequate, accurate, up to date information or instructions including any Customer Information.
- 3.6. If the Supplier notifies the Customer of any such proposed increase in the Charges pursuant to Condition 3.5, the Customer shall have the right to cancel the Contract without further liability to the Supplier and only insofar as it applies to any Products, Software or Services that have not been delivered or performance commenced.

4. PAYMENT

- 4.1. In respect of Products and Software, the Supplier shall invoice the Customer at any time after delivery made in accordance with Condition 7.1. In respect of Services, the Supplier shall invoice (or a VAT invoice where VAT is chargeable) the Customer monthly/quarterly/annually in advance. The Supplier may also invoice individual instalments where the Products, Software or Services are to be delivered or performed in instalments.
- 4.2. All Charges payable by the Customer under the Contract are exclusive of value added tax chargeable from time to time ("**VAT**") in England and Wales. Where VAT is chargeable, the Supplier will raise a suitable VAT invoice.
- 4.3. Unless the Supplier has agreed otherwise, the Customer shall pay each invoice in full (without deduction or set off) within 30 days of the date of the invoice and make payment in GBP. Payment shall be by bank transfer only and the Supplier will detail the relevant bank details on the invoice.
- 4.4. The time of payment for all invoices shall be of the essence, and no payment shall be deemed to have been made until the Supplier has received payment for the full amount shown on the invoice in cleared funds.

- 4.5. The Supplier may set and vary credit limits from time to time for the Customer and withhold all further supplies if the Customer exceeds such credit limit.
- 4.6. If any payment of any invoice is not made upon the due date, the Supplier may at its option:
- 4.6.1. without notice, charge interest on the amount outstanding from the due date to the date of receipt by the Supplier on a daily basis at a rate equivalent to 8% per annum above the base rate from time to time of Bank of England and such interest is recoverable upon demand;
 - 4.6.2. suspend any and all other deliveries of Products, Software or Services;
 - 4.6.3. terminate the Contract on service of notice in accordance with Condition 14; or
 - 4.6.4. issue a demand that all sums payable to the Supplier whether under the Contract or any other contract or agreement between the Supplier and Customer become immediately due and payable.
- 4.7. Without limiting any other rights or remedies, the Supplier may set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

5. BESPOKE PRODUCTS

- 5.1. Where the Contract requires the Supplier to provide a Bespoke Product, then the Customer will provide the Supplier with the Customer Information necessary to enable the Supplier to provide the Bespoke Products and otherwise fulfil its obligations under the Contract. The Customer will provide such Customer Information as required and in a timely manner and by any dates that the Supplier may reasonably require.
- 5.2. For the avoidance of doubt, the Supplier is not obliged to agree to provide any Bespoke Product unless it is agreed in writing in the Contract.
- 5.3. Any dates or timetable for the delivery of the Bespoke Product are conditional on receipt of all the necessary Customer Information required by the Supplier; any agreed dates or time for delivery of any Bespoke Product are not of the essence. Where the Customer does not provide the Customer Information in whole in a timely manner or by any date required by the Supplier and results in a delay in the delivery date of the Bespoke Products then the Supplier will have no liability to the Customer.
- 5.4. The Customer warrants and represents that the Customer Information is accurate, complete and does not infringe any IPR of third parties. The Customer shall indemnify and keep indemnified the Supplier from and against any losses, damages, liabilities, costs (including legal fees), and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of this warranty.

- 5.5. Where the Customer wishes to make a change to their Customer Information which would then have an impact on the Bespoke Product in terms of both the Charges and any delivery date, then any such change will only be implemented if agreed by the Supplier. The Supplier will be entitled to review and change the Charges and any delivery date for such Bespoke Product. Any subsequent change will only be implemented following the written agreement of both the Customer and the Supplier to the increase in the Charges and change in delivery date. Where the Supplier does not agree to the requested change to the Bespoke Product for whatever reason, then the original Contract for the Bespoke Product will continue.
- 5.6. The Supplier may consult with the Customer from time to time prior to delivery of the Bespoke Products to ensure the technical specification is acceptable to both parties provided always that the Supplier is not obliged to agree to any change to the technical specifications requested by the Customer.
- 5.7. In the event of a delay by the Customer in providing the Customer Information then:
 - 5.7.1. if the delay continues beyond two (2) weeks from the scheduled delivery date, the Supplier is entitled to charge the Customer storage costs incurred by the Supplier including those of holding all relevant materials, plus an administrative charge of no less than 10% on the total storage costs for the whole of the period of delay and the Customer shall pay such costs upon demand; and
 - 5.7.2. as soon as practicable following the eventual receipt by the Supplier of the delayed Customer Information, the Supplier shall notify the Customer of i) any additional costs that would be incurred by the Supplier if it were to meet, or attempt to meet, the original delivery date in the Contract for the Bespoke Products (with such additional costs to be added to the Charges); and ii) the revised delivery or completion date if the Supplier were to proceed to supply the Bespoke Products at the originally agreed Charges set out in the Contract.
- 5.8. The Customer will notify the Supplier in writing no later than one (1) working day that either it accepts the additional costs incurred by the Supplier in attempting to meet the original delivery date or that it chooses a delayed delivery or completion for the original Charges.

6. TIME OF DELIVERY

- 6.1. The Supplier will deliver the Products, Software or Services within a reasonable period of time following acceptance of the Customer's purchase order if no date is specified by the Supplier. Any delivery date specified by the Supplier is a guide only and any date for delivery is not of the essence. The Supplier may also make any delivery date conditional upon further information to be provided by the Customer (or third parties) for example Customer Information. The Supplier is not in any circumstances liable for any delay in delivery, however

caused. The Supplier may also deliver the Products or Software or commence Services in advance of any notified delivery date.

- 6.2. The Customer may request a delay in any agreed delivery dates, and such date will only be delayed with the express consent of the Supplier. The Supplier reserves the right to require payment for the Charges for the Products, Software, or Service earlier in the event the Supplier agrees to delay the delivery date on the request of the Customer; further the Supplier is entitled to raise, and the Customer shall pay on demand any additional costs and expenses the Supplier incurs from delaying the delivery including storage costs of holding all relevant materials for the period of delay.
- 6.3. If after fourteen (14) days following the due date for collection of the Products, the Customer has not collected them, the Supplier may resell or otherwise dispose of the Products without any further liability to the Customer save as follows:
 - 6.3.1. the Supplier shall deduct all reasonable storage charges and costs of resale; and
 - 6.3.2. the Supplier shall account to the Customer for the resale price above or below the Charges paid by the Customer for the Products and accordingly where there is an excess, refund the Customer or raise an invoice for any shortfall accordingly.

7. DELIVERY OF PRODUCTS

- 7.1. Unless agreed otherwise, the Products shall be delivered EXW – Ex Works at Global Inkjet Systems Ltd, Edinburgh House, Cowley Road, Cambridge, CB4 0DS, UK, Incoterms® 2020. The Supplier will notify the Customer when the Products are ready to be collected. Upon notification, the Products will be considered delivered for the purposes of these Conditions. Where the Supplier has agreed to deliver to an agreed location of the Customer then delivery shall take place when the delivery agent of the Supplier makes the Products available for unloading at the Customer's location.
- 7.2. All rights, obligations, conditions, and matters relating to the above Incoterm (EXW) shall apply to the Contract. So far as any costs or other obligations are not allocated by such Incoterm, they shall be payable by the Customer, including where the Supplier has agreed to arrange or facilitate delivery of the Product to a location of the Customer. For the avoidance of doubt, the Supplier arranging, facilitating or booking transportation on behalf of the Customer, including using a courier account nominated or provided by the Customer, shall not vary the applicable Incoterm or the allocation of risk, costs, duties, taxes or other obligations arising under it. Where the Supplier has agreed to deliver the Product to a location of the Customer, the Supplier will deliver to the location specified on the Customer's purchase order unless otherwise agreed in writing between the Supplier and the Customer.

- 7.3. The Customer shall pay any handling, import and export duties, shipping or other incidental costs and expenses the Supplier has incurred or will incur in relation to transporting the Products to such location as requested by the Customer.
- 7.4. Where any transportation, customs clearance, import duty, export duty, tax, tariff, levy, handling charge, brokerage charge or other charge relating to the transportation, export or import of the Products is payable by the Customer, the Customer shall remain responsible for such amount notwithstanding that the Supplier may be identified as the consignor or sender or that the Supplier arranged the shipment. If any such amount is charged or recharged to, recovered from, or otherwise paid by the Supplier as a result of the Customer's failure to pay it when due, the Customer shall reimburse the Supplier on demand for the full amount together with an administration charge of 5% of the amount recharged and any additional costs or expenses reasonably incurred by the Supplier in connection with its recovery. The Supplier may suspend further deliveries until all such amounts have been paid in full.
- 7.5. The Supplier reserves the right to deliver all Products in instalments. Each delivery of an instalment will be treated as a separate Contract. The Supplier will be entitled to invoice each instalment separately. Any delay in the delivery or defect in the delivery of an instalment will not entitle the Customer to cancel any other instalment.
- 7.6. Upon delivery in accordance with Condition 7.1., the Customer shall promptly collect the Products upon notification given and no later than seven (7) days after the date of notification. In the event that the Customer fails to collect the Products, the Supplier will store such Products and will be entitled to charge the Customer all costs and expenses related to such storage including storage insurance and handling charges plus an administrative charge of no less than 10% on the whole of the storage costs and expenses. Such additional costs and expenses are payable on demand.

8. RECEIPT OF PRODUCTS, DAMAGE, DEFECTS, AND NON-DELIVERY

- 8.1. Upon delivery in accordance with Condition 7.1, the Customer shall inspect the Products for defects and damage. The Customer will inspect the Products for any physical or other delivery damage that is obvious and with any other checks against any delivery manifesto or delivery note; further where possible, the Customer will install and use the Products to identify any defect if possible.
- 8.2. The Customer shall not be entitled to reject a delivery of the Products on the basis that an incorrect volume of the Products has been supplied.

8.3. If the Customer reasonably believes that the Products were damaged or are defective, it shall notify the Supplier no later than seven (7) days from the date of delivery and must provide details of such defect or damage supported by any evidence. After such seven (7) day period, the Products will be deemed accepted by the Customer. For avoidance of doubt any defects or damage discovered after this period will be dealt with via the product warranty procedures detailed in Condition 10.

8.4. In the case of non-delivery or partial non-delivery of Products, the Customer shall notify the Supplier as soon as practicable following the notified delivery date. Any claim against the Supplier in respect of such non-delivery or partial non-delivery must be made within seven (7) days of the notified delivery date.

9. RISK, TITLE AND RESALE OF PRODUCTS

9.1. Unless agreed otherwise, risk in the Products shall transfer to the Customer on the date of delivery determined in accordance with Condition 7.1.

9.2. Title in the Products shall only pass to the Customer when the Supplier has received in full and in cleared funds all sums due to it in respect of the Products and all other sums which are or which become due to the Supplier from the Customer on any account.

9.3. Until the date when title in the Products transfers to the Customer, the Customer holds the Products in a fiduciary capacity and shall:

- 9.3.1. keep the Products separate from other products or goods of the Customer and any other third parties;
- 9.3.2. safely store, protect, insure, and be clearly and legibly identified as the property of the Supplier;
- 9.3.3. inform the Supplier immediately if the Customer is subject to any event or circumstances in Condition 14.1.4 or likely to be and which could result in the Products being seized.

9.4. Without prejudice to Condition 9.3, the Customer may resell (but may not in any other way deal with) the Products to a third party and pass good title to that third party only when the sale is in the ordinary course of the Customer's business and such Products are a component of a system or product manufactured and sold by the Customer. The Customer may not resell the Products as a stand-alone component to any third party, whether for use as spare parts or for use in such third party's products or systems until title in such Products has transferred to the Customer in accordance with Condition 9.2. If the Customer resells any Product in contravention of this Condition 9.4, the Customer shall account to the

Supplier for the proceeds; the Supplier shall be entitled to terminate in accordance with Condition 14.1.5 without liability to the Customer.

10. PRODUCT WARRANTY

- 10.1. **Warranty:** Subject to Conditions 10.2 and 10.4, the Supplier warrants to the Customer that the Products will be free from any material defect in workmanship for a period of one (1) year from the date of delivery (the “**Warranty Period**”).
- 10.2. **Procedure:** If the Customer reasonably believes that a Product is in breach of the warranty given in Condition 10.1 within the Warranty Period, it shall notify the Supplier in writing no later than seven (7) days from the date on which the Customer first became aware, or ought reasonably to have become aware, of the defect, and:
- 10.2.1. the Supplier is given a reasonable opportunity to examine such Product and if reasonably requested by the Supplier, the Customer returns such Product to the Supplier’s place of business in its original packaging at the Customer’s cost for the examination to take place there, and
 - 10.2.2. shall provide details of such defect supported by any evidence or information reasonably requested by the Supplier.
- 10.3. **Remedy:** As the Customer’s sole and exclusive remedy, if the Product is in breach of the warranty given in Condition 10.1 and a notice has been served in accordance with Condition 10.2 within the Warranty Period, then the Supplier at its discretion, will repair or replace the Product in whole or in part.
- 10.4. **Limitations:** The warranty given in Condition 10.1 does not apply in the following circumstances:
- 10.4.1. the defect arises from normal wear and tear or is cosmetic damage such as scratches or dents;
 - 10.4.2. the defect arises from any tampering, removal or defacing the Product or of any product code, serial number, ID, or security seals;
 - 10.4.3. any damage, defects or faults from misuse, abuse, vandalism, deliberate tampering, theft, mishandling, misapplication, fire, water, power surge, earthquake, or subsidence;
 - 10.4.4. the Customer continues to make any use of the Product after it has given written notice of a defect under Condition 10.2;
 - 10.4.5. the defect arises as a result of damage in the course of transportation;
 - 10.4.6. any defect arising from the Customer failing to follow the Supplier’s oral or written instructions or specifications as to the handling, storage, installation,

commissioning, operation, use, or maintenance of the Product or (if there are none) good trade practice;

- 10.4.7. the Customer disassembles, alters, expands, or repairs the relevant Product without the express written consent of the Supplier;
- 10.4.8. any modifications to alter the functionality of the Product outside of any permitted parameters without the express written consent of the Supplier;
- 10.4.9. the defect arose from improper use of the Product or use outside its normal application;
- 10.4.10. in relation to any Bespoke Product, any defect arising from the Customer Information;
- 10.4.11. the Product is used with any other product which is not maintained or operated in accordance with the third party manufacturer's instructions or kept in an environment that is suitable for such third party product;
- 10.4.12. the defect arose from any electrical work external to the Product;
- 10.4.13. the defect arose from fluctuations in any electrical supply or current;
- 10.4.14. any damage caused by virus, spyware, or lack of a firewall when updates have not been installed or where an update has not yet become available.

10.5. The provisions of this Condition 10 shall apply where a Product has been repaired under the warranty save that such repaired Product will continue to benefit from the warranty but only for the period that remains from the original Warranty Period after the date the Customer first notified the Supplier under Condition 10.2. For any Products that are replaced the Warranty Period will recommence from the date of delivery of the replacement Product.

10.6. Where the Customer has a defective Product but is outside the Warranty Period then:

- 10.6.1. the Product will be assessed for repair by the Supplier provided the Customer complies with Conditions 10.2.1 and 10.2.2;
- 10.6.2. any remedy will be limited to repair only unless the Customer chooses to replace the Product at its own costs;
- 10.6.3. the Supplier is entitled to charge for the repair (including all delivery costs), the Customer submitting a purchase order in accordance with these Conditions and the Supplier may require payment in advance;
- 10.6.4. where the Product is repaired then the Supplier warrants to the Customer that the Products will be free from any material defect in workmanship for a period of ninety (90) days from the date the item is returned to the Customer and is subject to the same limitations as set out in Condition 10.4 as applicable;
- 10.6.5. any defect raised against the warranty given in Condition 10.6.4 and within the 90 day period, then the Customer will follow the procedures in Condition 10.2 to submit a claim to the Supplier;

- 10.6.6. provided the Customer has complied with Condition 10.6.5 then as the Customer's sole and exclusive remedy, the Supplier at its discretion, will either repair or declare the Product as unrepairable for whatever reason (for example if the Product is older than 3 years old and obsolete). In these circumstances the Customer will be given a price for replacement.
- 10.6.7. any repaired Product will benefit from a further ninety (90) day warranty period.

11. SUPPLY OF SERVICES

- 11.1. The Supplier shall provide the Services in accordance with the Contract and the Service Specification in all material respects.
- 11.2. The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates are estimates only. Time is not of the essence for the performance of the Services.
- 11.3. The Supplier shall have the right to make any changes to the Services at any time which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services. The Supplier shall notify the Customer in the event of any proposed change to the Service under the Contract.
- 11.4. The Customer shall:
 - 11.4.1. co-operate with the Supplier in all matters relating to the Services;
 - 11.4.2. where access is given to Supplier System, comply with the latest version of the AUP;
 - 11.4.3. provide the Supplier, its employees, agents, consultants, and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services; and
 - 11.4.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to provide the Services and ensure that such information is complete, accurate and up to date in all material respects.
- 11.5. In order to deliver the Services, the Supplier may provide the Customer with access to the Supplier System in order to deliver those Services. Providing access to the Supplier System is wholly within the Supplier's absolute discretion and can be removed, replaced, or substituted at any time by the Supplier upon reasonable notice. In addition, the Supplier may at any time:
 - 11.5.1. restrict access to only authorised users of the Customer;
 - 11.5.2. request such authorised users be replaced;
 - 11.5.3. suspend or cancel access of any authorised users;

- 11.5.4. impose additional requirements on such authorised users such as updating account passwords, or undergo training either prior to any continued use of the Supplier System; or
 - 11.5.5. impose any other reasonable requirement including requesting information or access to the Customer's own systems in order to verify use of the Supplier System by the Customer and all authorised users and/or maintain security of the Supplier System.
- 11.6. If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**") then:
- 11.6.1. without prejudice to any other rights or remedies, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and the Supplier is relieved of its obligations under the Contract to the extent the Customer Default prevents or delays the discharge of the Supplier's obligations; and
 - 11.6.2. where the Service is suspended in accordance with the above, the Supplier shall not be liable for any costs, expenses or losses sustained or incurred by the Customer whether arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations; and
 - 11.6.3. the Customer shall reimburse the Supplier on demand and recoverable as a debt for any costs, expenses or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 11.7. **Services Warranty:** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill and in accordance with the Service Specification for a period of thirty (30) days. All other warranties, representations, conditions implied by statute or law are excluded to the fullest extent permitted by law.
- 11.8. If the Customer reasonably believes that the Supplier is in breach of the warranty given in Condition 11.7 within the given warranty period, then it shall notify the Supplier no later than seven (7) days from the date of first becoming aware of the breach or when it ought to have become aware and must provide details of such breach supported by any evidence or information reasonably requested by the Supplier.
- 11.9. Where there is a breach of the warranty given in Condition 11.7 and subject to Condition 11.8 then the Supplier at its option may:
- 11.9.1. re-perform the Services; or
 - 11.9.2. refund the Charge or proportion of the Charges for the Services.

- 11.10. The remedy in Condition 11.9 is the sole and exclusive remedy available for a breach of the warranty given in Condition 11.7.

12. SOFTWARE LICENCE AND SUPPLIER SYSTEM

- 12.1. Subject to these Conditions, the Supplier grants a licence to the Software on the terms as set out in the EULA. A copy of the latest EULA is available on the Supplier's website.
- 12.2. Notwithstanding and without prejudice to the licence granted in accordance with the EULA, the Supplier grants a limited, revocable, non-exclusive and non-transferable right to use on the terms as detailed in this Condition 12 to use the Software solely for the purposes of using the Software to operate the Products or goods similar to the Product or for accessing the Supplier System to receive any Services.
- 12.3. Nothing in these Conditions or the EULA is to be construed as granting any rights or licence to use the Software or giving access to the Supplier System in any manner or for any purpose not expressly granted in these Conditions or the EULA.
- 12.4. The Customer shall ensure each of its employees, agents, officers, contractors, or other authorised representatives complies with these Conditions and the EULA. Without prejudice to the rights of the Supplier under the EULA or these Conditions, the Customer is liable for any breaches of the EULA or these Conditions by its employees, agents, officers, contractors, or other authorised representatives under these Conditions.
- 12.5. Unless specifically authorised in these Conditions and/or the EULA, the Customer (and shall also procure its employees, officers, agents, or subcontractors) shall not:
- 12.5.1. (except to the extent permissible under applicable law which is not capable of exclusion by agreement or for normal operation of the Product), copy, reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without Supplier's prior express written consent;
 - 12.5.2. use the Software in relation to any equipment other than the Product where Software is purchased or included as part of a Product;
 - 12.5.3. access the Supplier System for any other purpose other than for receipt of the Services in accordance with any Contract or other agreement for the supply of Services;
 - 12.5.4. remove, adapt, or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software or on any medium on which it resides or on any Supplier System; and

- 12.5.5. tamper, interrupt, replace or otherwise interfere with any security precautions in the Software or on the Supplier System to protect against any of the above or unauthorised use or access by somebody other than the appropriate licensee or authorised user of the Software or Supplier System.
- 12.6. If the Customer and the Supplier have entered into a separate 'GIS Software Licence Agreement' in respect of the Software then in the event of a conflict between the terms of the GIS Software Licence Agreement and these Conditions, then the former shall prevail over these Conditions.
- 12.7. **Software Warranty:** The Supplier warrants to the Customer that the Software will materially meet the Software Specifications for a period of thirty (30) days. All other warranties, representations, conditions implied by statute or law are excluded to the fullest extent permitted by law.
- 12.8. If the Customer reasonably believes that the Supplier is in breach of the warranty given in Condition 12.7 within the given warranty period then it shall notify the Supplier no later than seven (7) days from the date of first becoming aware of the breach or the date when it ought to have become aware, and must provide details of such breach supported by any evidence or information reasonably requested by the Supplier.
- 12.9. Where there is a breach of the warranty given in Condition 12.7 and subject to Condition 12.8 then the Supplier at its option may:
 - 12.9.1. update or edit the Software and issue a new licence for the Software; or
 - 12.9.2. refund the Charge or proportion of the Charges for the Software
- 12.10. **Supplier System Warranty:** The Supplier provides the Supplier System on an "AS IS" basis and makes no representations or warranties as to the availability, completeness, accuracy of the Supplier System which is made available. To the maximum extent possible the Supplier expressly excludes all conditions, warranties and others terms that may be implied by law into these Conditions and any and all liability to the Customer, whether arising under these terms or otherwise in connection with its use of the Supplier System.
- 12.11. In some instances, access and/or use of the Software or access to the Supplier System, the Customer and any end user may be required to create and maintain an online account; for example, an account is needed to download the software or access some Services. By creating an account, you agree to be bound by these Conditions including the AUP.
- 12.12. The creation and use of the account is solely for the purpose of accessing and using the Software and Supplier System where Services are provided. The account is not intended for

any other purpose including: to commit any unlawful activities; to distribute viruses; malware or other harmful code; for phishing or spam; to disrupt the business of the Supplier and any of its suppliers, partners or other affiliates; to gain unauthorised access to the Software or Supplier System or its suppliers, partners or other affiliates; to circumvent any security measures; or to copy or reproduce the Software.

- 12.13. Accounts are only created for download and use of the Software and accessing the Supplier System and subject to the following: i) accounts are for a real person only and not for a bot, or a real person as part of a bot-farm or any other artificial intelligence or machine learning tool; ii) the Customer and end user provides true, accurate and complete information as requested by the account creation process and warrants the same and warrants that they will keep such information up to date; iii) the Customer and end-user will only use account creation credentials such as email as directed by the Supplier; iv) the Customer and end user will create a secure password and maintain the security of that password such as not sharing it with any other person; v) the Customer will take the time to read and understand these Conditions, the EULA, the AUP and any updates from time to time and use every effort to abide by them in the use of the Software and Supplier System including any limitations on the use of any Products or Services purchased under any agreement (including a Contract); vi) if the Customer suspects that an account has been compromised then the Customer will notify the Supplier and take all steps to ensure that account is secure including changing the password.
- 12.14. Where applicable, the Customer undertakes to create an account or accounts only for the purpose of accessing and using the Software or accessing the Supplier System for the Services and not for any other purpose.
- 12.15. In relation to the accounts, the Supplier reserves the following rights which can be exercised at any time and without notice: i) restrict access to the account and/or the Software or any Service or Product; ii) suspend or terminate the account or block access to the Software or Supplier System based on any factors where it is legally and technically possible; iii) blacklist the account and any email associated with the account.
- 12.16. Notwithstanding any rights of termination set out in these Conditions or the EULA, the Supplier can terminate the licence granted in Conditions 12.1 and 12.2 immediately if the continued use or possession of the Software or accessing the Supplier System for the Services by the Customer infringes a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract including this licence or EULA or any other agreement.
- 12.17. The Customer acknowledges that the Software and the Supplier System and accompanying documentation are confidential and falls within the scope of Condition 17.

13. FORCE MAJEURE

- 13.1. Neither party shall be liable to the other party for any delay or failure in performance of its obligations under the Contract which is caused or contributed to by circumstances or events or sequence of events beyond its reasonable control. Should any such event occur, the affected party may at its own option suspend the supply of Products, Software or Services, defer the delivery date, reduce the amount of Product ordered, and/or delay delivery of the Software or performance of the Services. For the avoidance of doubt, an inability to pay the Charges will not be considered a force majeure event.
- 13.2. If the triggering event or circumstances continues for a continuous period of more than sixty (60) days, then the affected party may terminate the Contract by written notice to the other party without further liability to the other party.

14. TERMINATION FOR DEFAULT

- 14.1. The Supplier may terminate the Contract or any other agreement with the Customer at any time by giving notice if:
- 14.1.1. the Customer fails to pay for any delivery when the same becomes due;
 - 14.1.2. the Customer commits a material breach of these Conditions (including a breach of the EULA) or AUP and it cannot be remedied or if it can be remedied, the Customer has failed to remedy such material breach within a time period specified by the Supplier;
 - 14.1.3. the Customer ceases, or threatens to cease, to trade;
 - 14.1.4. if the Customer goes into liquidation, or has an administrator or receiver appointed or makes an arrangement or composition with its creditors or becomes bankrupt or suffers any analogous action in any jurisdiction in consequence of debt save to extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract; or
 - 14.1.5. if the circumstances occur as described in Condition 9.4.
- 14.2. Without prejudice to any other rights and remedies, if the Supplier has the right to terminate in accordance with Condition 14.1, the Supplier shall also be entitled:
- 14.2.1. to suspend further deliveries of Product or Software or the provision of Services under the Contract or any other agreement with the Customer; or
 - 14.2.2. suspend or restrict access to the Supplier System;

- 14.2.3. to require payment in advance of delivery of any Products or Software or performance of the Service; or
 - 14.2.4. where the Products and/or Software or Services have been not paid for, the Charges will become immediately due and payable; or
 - 14.2.5. if the Product or Software have been delivered or performance of the Services commenced, and which have not been paid for then the Charges shall become immediately due and payable.
- 14.3. The Supplier may terminate the Contract at any time by giving not less than 4 (four) weeks' notice in writing to the Customer if the Customer undergoes a change of control or if it is realistically anticipated that it shall undergo a change of control within two months. For the purposes of this Condition, "change of control" means where a person acquires the beneficial ownership of more than 50% of the issued share capital of the Customer or the legal power to direct or cause the direction of the management of the Customer.
- 14.4. If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under Condition 14.1.4 or this Condition 14 generally, it shall immediately notify the Supplier and in writing.
- 14.5. Termination of the Contract, however arising, shall not affect the accrued rights of the parties as at termination or the continuation of any provisions expressly stated to survive or implicitly surviving termination.
- 15. LIMITATION OF LIABILITY**
- 15.1. The extent of the Supplier's 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 Condition 15.
- 15.2. Subject to Conditions 15.5 and 15.6, the Supplier's total aggregate liability arising out of or in connection with a Contract shall not exceed the Charges paid or payable by the Customer for the Products, Software and/or Services giving rise to the claim.
- 15.3. Subject to Conditions 15.5 and 15.6, the Supplier shall not be liable for consequential, indirect, or special losses.
- 15.4. Subject to Conditions 15.5 and 15.6, the Supplier shall not be liable for any of the following (whether direct or indirect): loss of profit; loss of revenue; loss or corruption of data; loss or corruption of software or systems; loss or damage to equipment; loss of use; loss of production; loss of contract; loss of commercial opportunity; loss of savings, discount or

rebate (whether actual or anticipated); harm to reputation or loss of goodwill; loss of business; and/or wasted expenditure.

- 15.5. The limitations of liability set out in Conditions 15.2 to 15.4 shall not apply in respect of any indemnities given by the Customer under these Conditions or the Contract.
- 15.6. Notwithstanding any other provision of the Contract, the liability of the Supplier shall not be limited in any way in respect of death or personal injury caused by negligence, fraud or fraudulent misrepresentation, or any other losses which cannot be excluded or limited by law.
- 15.7. All conditions, warranties and other terms implied by statute or common law (including any implied terms relating to quality, fitness for purpose or description of the Products or Services) are excluded from the Contract to the fullest extent permitted by law.
- 15.8. This Condition 15 shall survive the termination of the Contract, however arising.

16. INDEMNITY AND INSURANCE

- 16.1. The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liabilities, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract including any breach of the EULA or AUP.
- 16.2. The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or such other country in which the Customer operates to cover its obligations under the Contract. On reasonable request, the Customer shall supply copies of any insurance policy .

17. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

- 17.1. The Customer shall keep in strict confidence all Confidential Material and only use the Confidential Material for the purpose of using the Products or Software or for receiving the Services and discharging the Customer's obligations under these Conditions and Contract.
- 17.2. The Customer shall restrict disclosure of such Confidential Material to such of its employees, officers, agents or sub-contractors as need to know such Confidential Material for the purpose of using the Products, Software or Services and discharging the Customer's obligations to the Supplier (together with any third parties approved in writing by the Supplier for this purpose, the "**Authorised Representatives**"), and shall ensure that such Authorised Representatives are subject to obligations of confidentiality corresponding to those which

bind the Customer. The Customer shall at all times be liable for the failure of any Authorised Representative to comply with this Condition 17.

- 17.3. The Customer shall not, without the Supplier's prior written consent, (i) disclose Confidential Material to any third party (which includes any other member of the Customer's corporate group or affiliates) or (ii) use or exploit (or permit the use or exploitation of) the Confidential Material in any way except for the purpose of using the Products, Software or Services and discharging the Customer's obligations to the Supplier.
- 17.4. The provisions of this Condition 17 do not apply to i) information in the public domain or in the Customer's possession other than as a result of a breach by the Customer or any of its Authorised Representatives of any confidentiality obligations whether owed to the Supplier or not; or ii) independently developed by the Customer without using any information supplied by the Supplier; or iii) any disclosure required by law or a regulatory authority or otherwise by the provisions of this Contract.
- 17.5. If the Customer develops or uses a product or process which, in the reasonable opinion of the Supplier, might have involved the use of any of the Confidential Material, the Customer shall, at the request of the Supplier, supply to the Supplier such information and documentation reasonably necessary to establish that the Confidential Material has not been used or disclosed.
- 17.6. All Confidential Material including materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier and shall be held by the Customer in safe custody at its own risk and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 17.7. Upon the request of the Supplier, the Customer shall immediately and no later than seven (7) days return all Confidential Material back to the Supplier or destroy the Confidential Material in its possession. The Customer shall certify in writing when it has returned all Confidential Material and no longer retains any (including copies) or destroyed all Confidential Material in its possession. For the avoidance of doubt this obligation will include all Authorised Representatives who have had access to the Confidential Material during the course of the Contract.
- 17.8. This Condition 17 shall survive termination of the Contract, however arising.

18. CUSTOMER'S PROPERTY AND LIEN

- 18.1. Where the Supplier is in possession of any goods or property belonging to the Customer (whether as bailee, consignee or otherwise) the Supplier shall not be liable in respect of any damage howsoever caused or damage to any other property caused by the Customer's goods or property and it shall be the Customer's responsibility to insure accordingly.
- 18.2. The Supplier shall have a general lien over the Customer's property in its possession in respect of all monies owing to the Supplier (and shall be deemed to be owing whether or not due, invoiced or ascertained) at the date of exercise of such lien. The Supplier shall be entitled on giving fourteen (14) days' notice to the Customer to sell the Customer's property and to apply the proceeds of sale thereof to the satisfaction of monies owing or deemed to be owing. The Supplier shall account for any balance to the Customer but shall otherwise be discharged for any liability whatsoever in respect of the Customer's property.
- 18.3. This Condition 0 shall survive termination of the Contract, however arising.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1. **Retained Ownership:** Each party shall retain ownership of all Intellectual Property Rights owned by or licensed to it prior to the Contract or developed independently of the Contract. The Customer shall retain ownership of the Intellectual Property Rights in the Customer Information.

The Supplier shall retain exclusive ownership of all Intellectual Property Rights in the Products, Software, documentation, designs, technology, know-how, methods, processes, tools, and other materials owned, developed, or used by the Supplier in connection with the Contract. Unless expressly agreed otherwise in writing, all Intellectual Property Rights created, developed or arising out of the Supplier's performance of the Services or the development or customisation of any Product or Software, including any modifications, improvements or derivative developments, shall vest in and remain the sole property of the Supplier.

Nothing in the Contract shall transfer ownership of either party's Intellectual Property Rights to the other party. Any rights granted to the Customer to use the Supplier's Intellectual Property Rights shall be limited to those expressly granted under Condition 19.3.

- 19.2. **3rd Party IPR:** In respect of any third party IPR in the Products, Software or Services, the Customer acknowledges that the Customer's use of any such IPR is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to sublicense such rights onwards to the Customer.

- 19.3. **Licence:** Subject to payment in full of all applicable Charges, the Supplier grants to the Customer a limited, non-exclusive, royalty-free licence to use the Supplier's Intellectual Property Rights incorporated in or necessary for the use of the Products or Software solely for the purpose for which the Products or Software were supplied. The Customer may permit its customers and end users to exercise such rights solely to the extent necessary to use, operate, maintain, or support Products or equipment into which the Products or Software have been incorporated. Except to that extent, the licence is non-transferable and non-sublicensable. The licence shall continue for so long as the Customer, its customer or an authorised end user lawfully owns or uses the relevant Product or Software, subject to the terms of the Contract.
- 19.4. **Exclusions on right to use:** Customers shall not procure or permit any other third party at any time to make any unauthorised use of such IPR, nor authorise or permit any of its agents or contractors or any other person to do so. Such restriction on use includes disassembling, decompiling, reverse-engineering, or creating derivative works based on any Product or Software or attempt to do any such thing.
- 19.5. **Supplier Indemnity:** The Supplier shall indemnify the Customer from and against any losses, damages, liabilities, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Product, Software or Service infringes the IPR of any third party ("**IPR Claim**"), provided that the Supplier shall have no such liability if the Customer:
- 19.5.1. does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible and no later than seven (7) days;
 - 19.5.2. makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - 19.5.3. does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim in its sole discretion;
 - 19.5.4. does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 19.5.5. does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors, or agents of the Customer; or
 - 19.5.6. uses the Product or Software in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 19.6. If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:

- 19.6.1. procure for the Customer the right to continue receiving the benefit of the relevant Product, Software or Service; or
- 19.6.2. modify or replace the infringing part of the Product, Software or Service so as to avoid the infringement or alleged infringement, provided the Product, Software or Service remain in material conformance to the relevant Specifications.
- 19.7. The indemnity given by the Supplier under Condition 19.5 is the sole and exclusive remedy for any IPR Claim.
- 19.8. The Supplier's obligations under Condition 19.5 above shall not apply to any Product or Software modified or used by the Customer which is used other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liabilities, costs, and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.
- 19.9. All conditions, warranties and other terms implied by statute or common law (including any implied terms relating to quality, fitness for purpose or description of the Products or Services) are excluded from the Contract to the fullest extent permitted by law.
- 19.10. **Customer Indemnity:** If the Customer alters or applies any process to any Product or Software or uses any Product or Software for any purpose other than that for which it is supplied by the Supplier and which results in a claim made by any third party against the Supplier, the Customer shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation where the damages include consequential losses, loss of profit and loss of reputation), and all interest, penalties and legal and other professional costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of any third party claim against the Supplier.
- 19.11. All documentation provided by the Supplier is considered Confidential Material and the Customer is subject to the duty of confidentiality as set out in Condition 17.
- 19.12. This Condition 19 shall survive termination of the Contract, however arising.

20. DATA PROTECTION AND CONSENT TO COLLECT DATA

- 20.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 20 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation. The Supplier's use of all personal data as data controller is governed by its privacy notice, available on its website and is incorporated into these Conditions by reference.

- 20.2. Each party shall act as an independent data controller in respect of personal data which it processes for its own business and administrative purposes in connection with the Contract. To the extent that the Supplier processes personal data on behalf of the Customer in providing any Services, Product, Software or Supplier System, the Customer shall be the data controller and the Supplier shall be the data processor in respect of such processing, as those terms are defined in the Data Protection Legislation.
- 20.3. Personal data processed in connection with the Contract may include names, business email addresses, telephone numbers, user account information and other business contact or technical information relating to employees, officers, agents, contractors and subcontractors authorised by the Customer to access or use the Products, Software, Supplier System or Services. The Supplier shall not knowingly process special category personal data on behalf of the Customer unless expressly agreed in writing and subject to any additional requirements of the Data Protection Legislation.
- 20.4. Accordingly, in relation to personal data as defined by the Data Protection Legislation, the Supplier shall:
- 20.4.1. process that personal data only on written instructions of the Customer;
 - 20.4.2. keep the personal data confidential;
 - 20.4.3. where transfers of personal data are outside of the UK then the Supplier will ensure that appropriate and adequate measures are put in place to comply with the Data Protection Legislation;
 - 20.4.4. assist the Customer in responding to any data subject access request;
 - 20.4.5. notify the Customer without undue delay on becoming aware of a personal data breach;
 - 20.4.6. at the written request of the Customer, delete or return personal data and any copies thereof to the Customer on termination of the Contract unless required by the Data Protection Legislation to store the personal data;
 - 20.4.7. ensure that it has in place appropriate technical or organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- 20.5. Notwithstanding the above provisions, the parties retain the right to enter into a data processing agreement which will take precedence over the provisions of this Condition 20.

- 20.6. The Customer agrees to the Supplier's use of any third party processors of personal data under a Contract provided that the Supplier has entered into a written agreement, which incorporates terms which are substantially similar to those set out in this Condition 20. The Supplier will remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Condition 20.
- 20.7. The Customer further agrees that the Supplier may collect and use technical information gathered as part of Products, Software or Services provided to the Customer. The Supplier may use this information solely to improve its products or software or to provide customised services or technologies to the Customer and will not disclose this information in a form that personally identifies the Customer.

21. **ANTI-BRIBERY**

- 21.1. For the purposes of this Condition 21, the expressions "**adequate procedures**" and "**associated with**" shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 21.2. Each party shall comply with the applicable bribery laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that i) all of that party's personnel; ii) all others associated with that party; and iii) all of that party's subcontractors; who are involved in performing the Contract so comply with this Condition 21 and the applicable bribery laws.
- 21.3. Without limitation to Condition 21.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such bribe or improper payment or advantage 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 improper payments or advantages are not made or received directly or indirectly on its behalf.
- 21.4. The Customer shall immediately notify the Supplier as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this Condition 21.

22. **ANTI-SLAVERY**

- 22.1. The Supplier shall comply with the Modern Slavery Act 2015 and its modern slavery policy.
- 22.2. The Customer confirms and agrees that:

- 22.2.1. neither the Customer nor any of its officers, employees, agents or subcontractors i) has committed an offence under the Modern Slavery Act 2015 (a “**MSA Offence**”); or ii) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or iii) 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;
- 22.2.2. it shall comply with the Modern Slavery Act 2015 and, if it does not have its own modern slavery policy, shall comply with the Supplier’s modern slavery policy;
- 22.2.3. it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and any modern slavery policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Supplier on request at any time throughout the Contract.

- 22.3. The Customer shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents, or subcontractors have breached or potentially breached any of the Customer’s obligations under Condition 22.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer’s obligations.

23. EXPORT

- 23.1. Products for export shall be supplied in accordance with the applicable delivery method and Incoterm agreed in writing between the parties. Where the Customer requires any inspection, testing, certification, or acceptance of the Products prior to shipment, the Customer shall notify the Supplier of such requirement before the Contract is entered into and the parties shall agree the applicable requirements, responsibilities, and costs in writing. Unless otherwise agreed, any such inspection or testing shall take place at the Supplier's premises prior to shipment and shall not delay delivery or transfer of risk under the applicable Incoterm.
- 23.2. Unless otherwise agreed in writing by the Supplier all Products and Software are supplied on the strict condition that i) they are for civil use, ii) they are not to be supplied to any country or for any application prohibited by law or regulation binding or in effect in the United States of America or United Kingdom, and iii) they will not in any way be installed, used or applied in or in connection with the production of chemical or biological weapons or of precursor chemicals for such weapons, iv) the operation of any nuclear facilities such as nuclear power plants, nuclear facilities fuel manufacturing plants, uranium enrichment plants, spent nuclear fuels stores or research reactors.
- 23.3. The Customer acknowledges that governmental regulations of more than one country may prevent or restrict the export to other countries of the Products or Software. The Customer

agrees to abide by such regulations which may exist and to indemnify the Supplier against any actions, costs, demands, or expenses resulting from any failure by the Customer to do so.

- 23.4. The Contract may be subject to United States/United Kingdom export laws and a requirement to obtain a validated export licence as well as to similar laws in other applicable jurisdictions. If applicable the Supplier shall file for the export licence only after appropriate documentation for the licence application has been provided by the Customer who shall furnish such documentation within reasonable time after the Supplier's order acknowledgment sent in accordance with Condition 2.5.1. Any delay in obtaining such licence shall suspend delivery dates without liability to either party. If an export licence is not granted or is revoked by the appropriate authorities, the Contract may be cancelled by the Supplier without liability for damages of any kind.

24. GENERAL

24.1. Notice

- 24.1.1. Any notice or other communication to be given to a party under or in connection with the Contract shall be in writing, in English and shall be delivered by hand or sent by commercial courier, fax or email to the address of the party at its registered office (if it is a company) or principal place of business (in any other case), or such other address (including fax and email addresses) as that party may have specified to the other party in writing;
- 24.1.2. A notice delivered by hand is deemed to have been received when left at the address referred to in Condition 24.1.1. A notice delivered by commercial courier shall be deemed to have been received on the date and at the time of the courier's delivery. A notice delivered by fax or email shall be deemed to have been received one working day after transmission.

- 24.2. **No waiver:** No failure, delay or omission by the Supplier in exercising either in full or partially any right, power or remedy provided by law or under any Contract shall operate as a waiver of that right, power or remedy, in whole or part, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

- 24.3. **Severance:** If any provision of the Contract (or part of any provision) or these Conditions is or becomes illegal, invalid, or unenforceable, the legality, validity, and enforceability of any other provision of the Contract or Conditions shall not be affected. If any provision of the Contract or these Conditions (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 the minimum 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.

- 24.4. **Consents:** Notwithstanding the provisions of Condition 23, the Customer is responsible for obtaining, at its own cost, all import, export licences, other consents and authorities in relation to the Products, Software or Services and their use and if applicable resale anywhere by the Customer and which are required from time to time. If reasonably requested by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to delivery and the Supplier is entitled to delay delivery of any Product or Software or perform any Service pending receipt of such licences and consents.
- 24.5. **Third Party Rights:** Except as expressly provided for in these Conditions, 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.
- 24.6. **Assignment:** The Customer may not assign, subcontract, or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay in its absolute discretion. The Supplier may delegate or subcontract its performance of the Contract and transfer or assign its rights and obligations hereunder without the consent of the Customer.
- 24.7. **Equitable Relief:** The Customer acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions in Condition 17 or Condition 19. Accordingly, without prejudice to any other rights or remedies it may have, the Supplier is entitled to the granting of injunctive relief (including any other equitable relief) concerning any threatened or actual breach of any of the provisions of such Conditions.
- 24.8. **No 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 relationships 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.
- 24.9. **Set-off:** The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under any agreement or contract which the Supplier has with the Customer. The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind.

- 24.10. **Variation:** Unless expressly reserved by the Supplier in these Conditions, 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 by each party.
- 24.11. **Entire Agreement:** The parties agree that the Contract, any documents referenced in these Conditions and any documents entered into pursuant to it 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. Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract. Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 24.12. **Cumulative remedies:** The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.
- 24.13. **Further Assurance:** The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 24.14. **Alternative Dispute Resolution:** Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Condition. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language of the arbitration shall be English. Nothing in this Condition shall prevent either party from applying to a court of competent jurisdiction for urgent interim or injunctive relief.
- 24.15. **Law:** The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including disputes or claims) are governed by and construed in accordance with the laws of England and Wales.
- 24.16. **Jurisdiction:** Subject to Condition 24.14, the courts of England and Wales shall have jurisdiction in relation to any application for interim or injunctive relief, the enforcement of any arbitration award, or any other matter which may properly be referred to a court notwithstanding the agreement to arbitrate. For the avoidance of doubt, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.