

Terms and Conditions for the Provision of Services

1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Affiliate: any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purposes of this definition, “subsidiary” and “holding company” shall have the meanings assigned to them under the Companies Act 2006 (as amended).

Bribe: anything that would amount to an offence of bribery or corruption under any applicable corruption laws (including anything which would be an offence under the Bribery Act 2010 as amended if the person concerned were subject to the jurisdiction of the UK courts under such Act; and “Bribes”, “Bribed”, “Bribery” and other variants of “Bribe” shall be construed accordingly.

Business Day: a day when banks in the country of origin of the Supplier are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with Clause 7.

Claims: any and all claims, demands, judgments, liabilities, damages, costs (including legal costs), losses, penalties, expenses and causes of action of whatever nature.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 21.8 shall apply to every proposal, quotation and form part of the Agreement with the Customer.

Consequential Loss:

- (a)** consequential or indirect loss under English law; and
- (b)** loss and/or deferral of services, loss of product, loss of use, loss of opportunity, loss of revenue, profit or anticipated profit (if any) in each case whether direct or indirect, and whether or not foreseeable at the date of the Agreement.

Agreement: the contract between the Supplier and the Customer for the supply of Services in addition to these Conditions and includes any Customer's purchase order form and any Customer's written acceptance of a quotation by the Supplier.

Co-Venturer: any other entity with whom the Customer or the Supplier, as the case may be, is or may be from time to time a party to a joint operating agreement, production sharing agreement or similar agreement relating to the Agreement and operations in respect of which the Services is being provided.

Customer: the company who purchases Services from the Supplier.

Customer Group: the Customer, its Co-Venturers, its and their Affiliates, its sub-contractors, its client and its and their respective directors, invitees, officers and employees but shall not include any member of the Supplier Group.

Data Protection Laws: all applicable laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, security, integrity or protection of personal data, including without limitation, the EU Data Protection Directive 95/46/EC and EU ePrivacy Directive 2002/58/EC together with all national implementing legislation, EU

General Data Protection Regulation 2016/679, Data Protection Act 2018, Philippine Data Privacy Act of 2012 and its Implementing Rules and Regulations, and all other applicable data protection laws, in each case as amended or superseded from time to time.

Embargoed Country: any country or geographic region subject to comprehensive economic sanctions or embargoes administered by the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") or the European Union ("EU"), including without limitation Cuba, Iran, North Korea, Syria, and the Crimea region.

Global Trade Laws: the US Export Administration Regulations; the US International Traffic in Arms Regulations; the economic sanctions rules and regulations administered by OFAC as well as any relevant Executive Orders; the rules and regulations administered by the United Kingdom, EU Council Regulations on export controls, including Nos. 428/2009, 267/2012; other EU Council sanctions regulations, as implemented in EU Member States; United Nations sanctions policies; all relevant regulations made under any of the foregoing; and other applicable economic sanctions or export and import control laws.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Sanctioned Person: at any time: (a) any person or entity included on: OFAC's Specially Designated Nationals and Blocked Persons List, the Sectoral Sanctions Identifications List, or the Foreign Sanctions Evaders List; the EU's Consolidated List of Sanctions Targets; or any similar list; (b) any person resident in, or entity organised under the laws of, an Embargoed Country; or (c) any person or entity majority-owned or controlled or acting on behalf of any of the foregoing.

Services: the services supplied by the Supplier to the Customer as set out in the Agreement.

Sub-Contractor: any party (other than the Supplier) with whom the Supplier has a contract for performance of any part of the Services, or with whom the Supplier has a contract (other than as set out in the Agreement) for performance of services relating to the Supplier, and, shall extend to include such party's sub-contractors and vendors.

Supplier: the company named in the proposal who provides Services to the Customer.

Supplier Group: the Supplier, its Co-Venturers, its and their Affiliates, its Sub-Contractors and its and their respective directors, invitees, officers and employees but shall not include any member of the Customer Group.

Supplier Materials: all materials, equipment, assets, documents and other property of the Supplier.

Supplier Vessel: a vessel either owned, chartered or operated by the Supplier and used in connection with the Services under the Agreement.

Premises: as set out in the Agreement.

Vessel: the vessel or object of performance provided by the Customer and as set out in the Agreement.

1.2 Words denoting the singular shall include the plural and vice versa.

2 SUPPLY OF SERVICES

2.1 The Supplier shall supply the Services to the Customer in accordance with the Agreement in all material respects.

2.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

2.3 Where members of the Supplier's staff are specifically mentioned in the Agreement to carry out the Services, the Supplier has the right to nominate alternative staff of equal standing at any time with the consent of the Customer whose consent shall not be unreasonably withheld.

2.4 The Supplier reserves the right to substitute the Supplier Materials for other materials where the Supplier Materials are not readily available provided that in the Supplier's view the substituted materials are fit for purpose.

2.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

2.6 The Supplier does not verify the correctness of statements provided by classification societies or their representatives.

2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not (and are not intended to) form part of the Agreement, constitute any representation which can be relied upon, or have any contractual force.

3 CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

(a) ensure that the terms of the Agreement and any information it provides in the Agreement are complete and accurate;

(b) cooperate with the Supplier in all matters relating to the Services within a reasonable time;

(c) provide the Supplier, its employees, agents, consultants and Sub-Contractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects within a reasonable time;

(e) appoint a named representative who will be responsible for liaison between the Supplier and the Customer who can enter into legally binding agreements with the Supplier;

- (f) prepare the Customer's premises for the supply of the Services (if applicable);
- (g) prepare the Vessel prior to the commencement of the Services by the date set out in the Agreement safely afloat and, unless otherwise agreed, gas free and/or inerted, free of cargo, slops, sludge, dirty ballast and of any substances in the structure of the Vessel which are dangerous or harmful to health, with suitable access/egress/lighting as required and in accordance with all safety requirements (if applicable);
- (h) retain control and responsibility over the Vessel at all times;
- (i) provide the crew of the Vessel, as well as any consumables, materials and other supplies necessary for the implementation of the trial run or test (if applicable);
- (j) obtain and maintain all necessary licences, permissions, approvals and consents which may be required before the date on which the Services are to start; and
- (k) (if requested by the Supplier) keep and maintain the Supplier Materials at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

3.2 If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this Clause; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

4 RIGHT TO SUB-CONTRACT

4.1 The Supplier shall be entitled to procure performance of Sub-Contractors in accordance with the following provisions of this Clause:

- (a) any such performance of all or any of the Supplier's obligations by the Sub-Contractors shall be and constitute full and sufficient performance by the Supplier of their obligations;
- (b) the Sub-Contractors and their employees and agents will be entitled to the benefits of the provisions of Clause 13; and
- (c) any performance of the Supplier's obligations by the Sub-Contractors shall be without prejudice to the rights of the Customer for any failure by the Supplier in performance of the Supplier's duties and obligations and notwithstanding performance by the Sub-

Contractors, the Supplier shall remain solely responsible to the Customer for performance of their obligations.

5 VESSEL INSPECTION

- 5.1** Where the Services consist of Vessel inspections, such inspections will, unless otherwise expressly agreed in writing, be superficial inspections afloat undertaken on the following terms of this Clause.
- 5.2** Inspections are limited to those parts of the Vessel, her machinery equipment or records (if made available) which were actually exposed, uncovered or readily accessible and the Supplier will not report on any other part of the Vessel, her machinery or equipment and shall have no responsibilities whatsoever in such respect.
- 5.3** The Supplier will not report on the Vessel's water tightness or integrity, the operational efficiency of its machinery or equipment, its suitability for any business trade, or its stability characteristics unless expressly included in the Agreement.

6 UNDERWATER SURVEYS

- 6.1** Where specifically called for in the Agreement, underwater surveys carried out in lieu of statutory hull surveys in dry dock, or to enable a statutory dry dock survey to be postponed, are carried out under the supervision of the relevant classification society which is entirely responsible for the final outcome of the surveys and for decisions based on the results of such a survey. Should the Supplier render a report, the information is for guidance only.

7 CHARGES AND PAYMENT

- 7.1** The Charges for the Services shall be detailed in the Agreement. Where Charges for such Services are provided on a time and materials basis:
- (a)** the Charges shall be calculated in accordance with the Supplier's standard hourly rates and daily fee rates, as set out in the Agreement;
 - (b)** the Supplier's standard daily fee rates for each individual are calculated on the basis of a 12 hourly day from 07:00hrs to 19:00hrs regardless of whether the day is a public holiday, Saturday, Sunday or Business Day (including induction days at the Customer's premises);
 - (c)** the Supplier's daily fees rates for individuals and Supplier Materials are always charged at a daily fee rate unless stated otherwise;
 - (d)** the Supplier shall be entitled to charge an overtime rate as set out in the Agreement, for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Clause 7.1(b);
 - (e)** the Supplier shall be entitled to charge at their standard hourly/daily rates for personnel and Supplier Materials in respect of any delay in the commencement of the delivery of Services where this delay arises due to the actions or inactions of the Customer. In the event of delay over 5 days, the Supplier shall be entitled to suspend or terminate the Agreement; and
 - (f)** the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, certificates attesting the gas-free condition of the Vessel,

the necessary degasifying of tanks, bilges, the initial filling and refills of lubricating and hydraulic oils as well as other materials as consumables, tugboats and pilotmen as well as port and lock, docking fees, travelling expenses, costs associated relating to transporting the Supplier Materials, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

- 7.2** The Supplier reserves the right to increase its standard daily fee rates, provided that such Charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 4 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Agreement by giving 2 months' written notice to the Customer.
- 7.3** All quotations for Services to be carried out at anchorages or berths are subject to permission being granted by the relevant authorities for such Services to be carried out.
- 7.4** Unless otherwise agreed, the Supplier shall invoice the Customer 30 days in arrears against the schedule of payments set out in the Agreement (if applicable).
- 7.5** The invoice will be sent directly to the Customer at the address and for the attention of such persons indicated in the Agreement to receive invoices.
- 7.6** Unless otherwise agreed, the Customer shall pay each invoice submitted by the Supplier:
- (a)** within 30 days of the date of the invoice;
 - (b)** in full and in cleared funds in the currency of the invoice to the bank account nominated in writing by the Supplier; and
 - (c)** time for payment shall be of the essence of the Agreement.
- 7.7** All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT") and any local taxes as may apply. Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.8** If the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Supplier shall be entitled to any or all of the following remedies (without prejudice to any other right or remedy available to the Supplier):
- (a)** suspend the Agreement until the outstanding invoices have been paid in full;
 - (b)** withdraw all credit facilities offered to the Customer with immediate effect;
 - (c)** require immediate payment of any and all outstanding invoices issued by the Supplier whether or not they are due for payment;
 - (d)** withdraw any discount applied on the Agreement;
 - (e)** recover all expenses and legal costs arising out of recovery of monies from the Customer; and

(f) charge interest on the overdue amount at the rate of 4% per annum above Barclay's base rate from time to time, such interest to be compounded at quarterly intervals. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.9 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7.10 Should the Customer dispute any of the contents of the Supplier's invoices, the Customer must raise this with the Supplier within 5 Business Days of the date of the invoice. In any event, the undisputed amount of the Invoice shall be paid in accordance with Clause 7.6.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

8.3 All Supplier Materials are the exclusive property of the Supplier.

9 CONFIDENTIALITY

9.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, reports or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Clause as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Clause shall survive termination of the Agreement.

10 WARRANTY

10.1 The Supplier warrants that it will carry out the Services with reasonable care and skill. To the extent that any such Services have not been carried out with reasonable care and skill, the Supplier agrees, at any time during the period of 3 months following the performance of the Services by the Supplier, to repair any equipment and/or rectify any Service which is proven to the Supplier's reasonable satisfaction to be defective in materials or workmanship provided that such defects are solely attributable to the fault of the Supplier's workmanship and supply of materials.

- 10.2** Where the Supplier has been validly notified of a defect, the Supplier shall be required to remedy the defect free of charge to the Customer, or at the Supplier's sole discretion, grant credit or refund the Customer the Charges, or a proportionate part of the Charges, but the Supplier shall have no further liability.
- 10.3** The warranty referred to in Clause 10.1 above shall not apply where:
- (a) the equipment or Service has been altered or varied in any way whatsoever or been subject to misuse, neglect or unauthorised repair;
 - (b) the equipment or Service has not been maintained or used in accordance with any instructions and guidelines specified by the Supplier;
 - (c) the Customer has engaged another company or individual to repair or inspect the defect; or
 - (d) the Customer has not informed the Supplier of the defect within 5 Business Days of becoming aware of the defect or (where the defect was not apparent on reasonable inspection) within 3 months of completion of the Services.
- 10.4** The Supplier warrants that where the Services are for the provision by the Supplier of personnel only, such personnel shall be suitably qualified for the Services described in the Agreement.

11 LIMITATION OF LIABILITY

- 11.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or Sub-Contractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) any liability which cannot be limited or excluded by applicable law.
- 11.2** Notwithstanding any other provisions of the Agreement, the liability of the Supplier under, pursuant to or in connection with the Agreement shall be limited to USD 500,000 in respect of any and all Claims arising under or in connection with the Agreement, of whatsoever nature and howsoever arising (including any claim in tort or breach of statutory duty or any claim for deductible payable by Supplier pursuant to Clause 14.8).
- 11.3** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 11.4** This Clause shall survive termination of the Agreement.
- ## **12 CONSEQUENTIAL LOSS**
- 12.1** Subject to Clauses 11.1 and 19 neither party shall be liable to the other for any Consequential Loss whatsoever arising out of or in connection with the performance or non-performance of the Agreement, in contract, tort (including negligence), breach of statutory duty or otherwise at law.

13 INDEMNITY

13.1 The Supplier Group shall indemnify, defend and hold harmless the Customer Group in respect of all Claims arising out of or in connection with the performance of the Agreement in respect of:

- (a)** loss of or damage to or pollution from the property or Supplier Materials of the Supplier Group; and
- (b)** death, injury or disease of any member of the Supplier Group,

irrespective of the negligence, wilful misconduct or breach of duty (statutory, tortious or otherwise) of the Customer Group.

13.2 The Customer Group shall indemnify, defend and hold harmless the Supplier Group in respect of all Claims arising out of or in connection with the performance of the Agreement in respect of:

- (a)** loss of or damage to or pollution from the property or equipment of the Customer Group; and
- (b)** death, injury or disease of any member of the Customer Group,

irrespective of the negligence, wilful misconduct or breach of duty (statutory, tortious or otherwise) of the Supplier Group.

13.3 All exclusions and limitations of liability and any indemnities set out in the Agreement shall survive the expiry or termination of the Agreement but only in respect of liabilities which arise and indemnities which are invoked as a result of incidents which occurred prior to the effective date of termination.

13.4 Subject always to the limitations of liability set in Clause 11, the Supplier shall comply and ensure that the Sub-Contractors shall comply, with all applicable laws and shall assume all liability for and shall defend, indemnify and hold harmless the Customer against all Claims arising from, relating to, or in connection with the violation thereof by the Sub-Contractors or arising from a breach of the Agreement by the Supplier.

14 INSURANCE

14.1 The Supplier shall effect and maintain (and cause its Sub-Contractors to obtain and maintain) in full force and effect throughout the duration of the Agreement and any extensions thereto such policies of insurance in terms of coverage and limits with reputable insurers reasonably acceptable to the Customer as set out below.

14.2 The Supplier shall obtain and maintain, as a minimum and where relevant, the insurances set out below:

- (a)** employer's liability insurance to cover personnel up to the statutory minimum;
- (b)** third party liability insurance including coverage for bodily injury, property damage, premises and operations, independent contractors, completed operations, pollution and contractual liability (or their equivalents), with a limit of not less than USD 1,000,000 combined single limit any one occurrence;

- (c) all risk insurance to the full replacement value of the Supplier's Premises, plant machinery and equipment of the Supplier's Vessel, and any other location where equipment, Supplier's Materials or supplies are being obtained, stored or used by the Supplier for the purposes of the Agreement including coverage for the property of others in the care, custody, control of the Supplier;
- (d) protection and indemnity insurance and hull and machinery insurance (with a limit of not less than USD 350,000 per accident on each Supplier Vessel) with sound and reputable insurance companies underwriters or associations;
- (e) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism, piracy and crew risks);
- (f) where applicable, offshore employers liability insurance to cover personnel offshore up to the statutory minimum;
- (g) any other insurances which the Supplier is obliged to carry under applicable laws; and
- (h) any additional insurance, which is to be provided at the Customer's expense, which the Parties agree is required to protect the Customer's interest, and which the Customer approves in writing being obtained by the Supplier.

14.3 The Supplier shall procure that its insurances shall, and shall use best endeavours to procure that those of its Sub-Contractors shall, to the extent of the Supplier's liabilities under the Agreement:

- (a) be primary with respect to all insurances held by the Customer;
- (b) be endorsed to provide that the underwriters waive any rights of subrogation against the Customer;
- (c) include an indemnity to the principals clause on all policies listed in 14.2(b)-(d) and (g)
- (d) include a cross-liabilities Clause (as regards third party liability insurance)
- (e) not be cancelled or materially changed, without at least 30 Business Days' written notice of such material change, cancellation, or non-renewal by the Supplier or its Sub-Contractors; and
- (f) be endorsed to the effect that claims formulated by the Supplier's personnel against the Customer shall be treated as claims against the Supplier and compensated by such insurances.

14.4 The requirements regarding insurance contained in this Clause shall be without prejudice to and shall not reduce or affect the Supplier's indemnities nor limit the Supplier's liabilities under the Agreement. The insurance amounts set out above are minimum requirements, and they are not to be construed as the Customer's consent to accept financial liability in excess of the amounts set forth except as otherwise agreed in the Agreement.

14.5 Prior to commencement of the Services, the Supplier shall furnish the Customer with certificates of insurance and thereafter, renewals thereof, as soon as practicable. The Supplier shall notify the Customer immediately of any material change to or cancellation or threatened cancellation of any such insurances.

- 14.6** Should the Supplier fail or refuse to obtain or maintain any insurances required by this Clause, or fail to provide the Customer with certificates or have any insurance cover cancelled and fail to obtain alternative insurance (in which case the Supplier must notify the Customer immediately), the Customer shall have the right to procure such insurances itself.
- 14.7** Subject to the provisions of Clause 13, the Supplier shall defend, identify and hold harmless the Customer from and against all Claims arising from, relating to or in connection with the failure by the Supplier to observe the provisions of this Clause.
- 14.8** All deductibles shall be payable by the Supplier subject to the limitation of liability provisions referred to in Clause 11.

15 BUSINESS ETHICS

- 15.1** The Customer represents and warrants that the Customer has not Bribe at any time in connection with obtaining the Agreement and shall not Bribe in connection with the Agreement or its performance.
- 15.2** The Customer represents and warrants that the Customer has no involvement with any slavery, human trafficking or child labour in its corporate activities and shall comply with the Modern Slavery Act 2015.
- 15.3** The Customer shall if so requested by the Supplier in writing promptly provide any information which the Supplier may reasonably require in order to monitor its compliance with this Clause. In particular and without limitation, a director or other duly authorised representative of the Customer with direct responsibility for the Agreement shall certify in writing to the Supplier on an annual basis its full compliance with this Clause during the preceding year.
- 15.4** The Customer shall where lawful notify the Supplier immediately in writing upon becoming aware of, or suspecting:
- (a)** any failure to comply with any provisions of this Clause; and
 - (b)** any extortive solicitation, demand or other request for anything of value, by or on behalf of any person relating to the Agreement or its subject matter.
- 15.5** Any failure by the Customer to comply with any provision of this Clause shall constitute a material breach of the Agreement.
- 15.6** In the event of a breach or suspected breach of this Clause, such determination to be at the sole discretion of the Supplier, the Supplier shall be entitled to with immediate effect suspend provision of the Services under the Agreement and/or terminate the Agreement.

16 TERMINATION

- 16.1** Without limiting its other rights or remedies, either party may terminate the Agreement by giving the other party no less than 2 weeks' written notice.
- 16.2** Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a)** the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so; or

- (b) an order is made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver, administrator or similar officer is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

16.3 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within 15 days after being notified in writing to do so; or
- (b) the Supplier in its sole discretion believes that the Customer is in breach of Clause 15.

16.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Agreement or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Clause 16.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.

17 CONSEQUENCES OF TERMINATION

17.1 On termination of the Agreement for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall immediately pay to the Supplier all reasonable costs and expenses incurred by the Supplier as a consequence of such termination;
- (c) the Customer shall return all of the Supplier Materials to the Supplier. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- (e) Clauses which expressly or by implication survive termination shall continue in full force and effect.

18 FORCE MAJEURE

18.1 Neither the Customer nor the Supplier shall be liable for any loss or damage or total or partial failure to perform this Agreement (other than a failure to perform an obligation to pay money) caused wholly or partly by any circumstance or matter beyond the reasonable control of the relevant party, as the case may be, including (without limiting the generality of the foregoing) acts of God, acts of governmental authorities, fires, strikes, floods, epidemics, quarantine restrictions, wars, insurrections, riots, violent demonstrations, criminal offences, acts and

omissions of civil or military authority or of usurped power, requisition or hire by any governmental or other competent authority, embargoes (“Force Majeure Event”).

18.2 Where a party seeks to rely upon a Force Majeure Event as described in Clause 18.1 it will advise the other party of the Force Majeure Event at the earliest opportunity and also advise that party of the likely duration of such Force Majeure situation.

18.3 Each party shall have the option to terminate the Agreement on giving 14 Business Days’ notice in the event that a party is unable to fulfil its obligations in terms of the Agreement for a continuous duration of 6 months by reason of a Force Majeure Event that so prevents a party fulfilling such obligations.

19 TRADE COMPLIANCE

19.1 The Customer warrants compliance with:

- (a)** Global Trade Laws in all respects related directly or indirectly to the performance of the Agreement and undertakes that they will not, through any act or omission place the Supplier in violation of Global Trade Laws; and
- (b)** all other rules and regulations including those of the territories where goods and/or Services are to be delivered.

19.2 Without prejudice to any other clause of the Agreement, the Customer shall indemnify and hold harmless the Supplier and any of the Supplier’s Affiliates against all Claims and in respect of all loss suffered by them as a result of or relating to violations of this Clause including any penalties or costs associated with government investigations or enforcement actions under Global Trade Laws. For the avoidance of doubt, Clause 12 shall not apply in respect of a party’s rights of indemnity under this Clause.

19.3 The Customer represents and warrants that it, its affiliates, and its directors, officers, key employees or agents are not Sanctioned Persons.

19.4 Any breach, known future conduct that would likely cause a breach (as determined by either Party in its discretion), or a change to Global Trade Laws which makes continued performance under the Agreement impermissible, entitles either Party at its absolute discretion to immediately terminate this Agreement. In that event and if either party terminates this Agreement due to a change in applicable Global Trade Laws, both parties agree that: (i) such termination shall not constitute a breach of this Agreement by the party terminating and the other party waives any and all claims against the terminating party for any loss, cost or expense, including consequential damages that the other party may incur by virtue of such termination; and (ii) both parties agree to take reasonable steps to cooperate in winding down this Agreement.

20 DATA PROTECTION

20.1 The Customer warrants that it shall process any personal data in relation to the Agreement at all times in accordance with the requirements of Data Protection Laws, including without limitation, those pertaining to the establishment of adequate safeguards for data privacy and security, and to upholding the rights of data subjects. The Customer undertakes to keep the Supplier indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with breach of this Clause.

21 GENERAL

21.1 Assignment and other dealings

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

21.2 Notices

- (a)** Any notice or other communication given to a party under or in connection with the Agreement shall be by email.
- (b)** A notice or other communication shall be deemed to have been received one Business Day after transmission.
- (c)** The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

21.3 Severance

- (a)** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, or in breach of the relevant sanctions, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Agreement.
- (b)** If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.4 Waiver

A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.5 No partnership or agency

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

21.6 No solicitation

Throughout the duration of this Agreement and for a period of 12 months thereafter, the Customer shall not solicit or endeavour to solicit any employee of the Supplier, unless express permission has been given.

21.7 Third parties

A person who is not a party to the Agreement shall not have any rights to enforce its terms against the Supplier in accordance with the Contracts (Rights of Third Parties) Act 1999.

21.8 Variation

Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

21.9 Entire Agreement

- (a)** These Conditions together with the Agreement constitutes the entire agreement and understanding of the parties. It supersedes any previous agreement, understanding, discussion or exchange between the parties (or their representatives) relating to the Service which now forms the subject matter of the Agreement.
- (b)** Both parties agree and represent to each other that neither party is entering into the Agreement as a result of, or in reliance on, any warranty, representation, statement, agreement or undertaking of any kind whatsoever (whether in writing or oral and whether made negligently or innocently) made by any person other than as expressly set out in the Agreement as a warranty and identified as such in the Agreement as a warranty.
- (c)** For the avoidance of doubt it is intended and agreed that any liability which might otherwise have arisen in tort for negligent misrepresentation or for negligent or innocent misrepresentation whether at common law or under statute is hereby excluded and any remedy that might otherwise have so arisen is rejected.
- (d)** Nothing in this Clause shall limit or exclude any liability for fraud.

21.10 Governing law and jurisdiction

- (a)** The Contract shall be governed by and construed in accordance with the laws of England.
- (b)** The Agreement and any contractual or non-contractual rights or obligations arising out of or in connection with it or its subject matter shall be subject to the exclusive jurisdiction of the English courts.
- (c)** Each Party hereby agrees to accept service of process in connection with the Agreement at the address notified in the Agreement.