



15 April 2025

## Terms and Conditions for the supply of goods and services

### 1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Background IPR:** means any and all Intellectual Property Rights that are owned by or licensed to either party and which are or have been developed independently of this Contract (whether prior to the Commencement Date or otherwise).

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.9.

**Contract:** the contract between the ORR and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

**control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Date:** the date specified in the Order, or, if none is specified, within 14 days of the date of the Order.

**Delivery Location:** the address for delivery of Goods as set out in the Order.

**Foreground IPR:** has the meaning given in clause 9.1.

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

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the ORR and the Supplier.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

**Mandatory Policies:** the ORR's mandatory policies (available at <https://www.orr.gov.uk/about/procuring-goods-and-services>) as may be updated by the ORR from time to time.

**Order:** the ORR's order for the supply of Goods and/or Services, as set out in the ORR's purchase order form, or in the ORR's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**ORR:** means the Office of Rail and Road.

**ORR Materials:** has the meaning set out in clause 5.3(i).

**Services:** the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the ORR and the Supplier (whether in the Order or otherwise).

**Supplier:** the person or firm from whom the ORR purchases the Goods and/or Services.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

## **2 BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the ORR to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Order; or
  - (b) any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

## **3 SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Goods Specification;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the ORR, expressly or by implication, and in this respect the ORR relies on the Supplier's skill and judgement;
  - (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The ORR may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

- 3.4 If following such inspection or testing the ORR considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the ORR shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 The ORR may, acting reasonably, conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### **4 DELIVERY OF GOODS**

- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (c) if the Supplier requires the ORR to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- (a) on the Delivery Date;
  - (b) at the Delivery Location; and
  - (c) during Business Hours or as instructed by the ORR.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver the Goods in instalments without the ORR's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the ORR to the remedies set out in clause 6.1.
- 4.5 Title and risk in the Goods shall pass to the ORR on completion of delivery.

#### **5 SUPPLY OF SERVICES**

- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the ORR in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the ORR notifies to the Supplier.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with the ORR in all matters relating to the Services, and comply with all instructions of the ORR;
- (b) perform the Services with all due care, skill and diligence in accordance with good practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the ORR expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the ORR, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the ORR's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the ORR to the Supplier (**ORR Materials**) in safe custody at its own risk, maintain the ORR Materials in good condition until returned to the ORR, and not dispose of or use the ORR Materials other than in accordance with the ORR's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the ORR to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the ORR may rely or act on the Services; and
- (k) comply with any additional obligations as set out in the Service Specification.

## **6 ORR REMEDIES**

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, the ORR shall, without limiting or affecting other

rights or remedies available to it, have any one or more of the following rights and remedies:

- (a) to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;
- (b) to recover from the Supplier any costs incurred by the ORR in obtaining substitute goods or services from a third party;
- (c) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided or Goods that it has not delivered.

6.2 If the Supplier has delivered Goods that do not comply in all material respects with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the ORR shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (c) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (d) to recover from the Supplier any expenditure incurred by the ORR in obtaining substitute goods from a third party; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the ORR arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.3 If the Supplier has supplied Services that do not comply in all material respects with the requirements of clause 5.3(d) then, without limiting or affecting other rights or remedies available to it, the ORR shall have one or more of the following rights and remedies:

- (a) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (b) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (c) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (d) to recover from the Supplier any expenditure incurred by the ORR in obtaining substitute services or deliverables from a third party; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the ORR arising from the Supplier's failure to comply with clause 5.3(d).

6.4 These Conditions shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Supplier.

6.5 The ORR's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7 ORR'S OBLIGATIONS**

7.1 The ORR shall:

- (a) provide the Supplier with reasonable access at reasonable times to the ORR's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8 CHARGES AND PAYMENT**

8.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the ORR.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the ORR, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Supplier shall invoice the ORR on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the ORR on completion of the Services. Each invoice shall include such supporting information required by the ORR to verify the accuracy of the invoice, including the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, the ORR shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by the ORR under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the ORR, the ORR 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 Goods or Services or both, as applicable, at the same time as payment is due for the supply of the Goods or Services.

- 8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services and/or the provision of Goods (other than the other Party's Background IPR) ("**Foreground IPR**") shall be owned by the ORR.
- 9.2 The Supplier shall not incorporate any third-party Background IPR into any Deliverable without ensuring that the ORR is free to use in accordance with this Contract.
- 9.3 The Supplier grants to the ORR, or shall procure the direct grant to the ORR of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use, copy and modify the Supplier's Background IPR for the purpose of receiving and using the Goods and/or Services and the Deliverables.
- 9.4 The ORR grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to use the ORR's Background IPR and the Foreground IPR and/or copy any materials provided by the ORR to the Supplier for the term of the Contract solely for the purpose of providing the Goods and/or Services to the ORR.
- 9.5 The Supplier acknowledges that all rights in the ORR Materials are and shall remain the exclusive property of the ORR.

## **10 INDEMNITY**

- 10.1 The Supplier shall indemnify the ORR against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by the ORR arising out of or in connection with:
- (a) any claim made against the ORR for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the ORR Materials); and
  - (b) any claim made against the ORR by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables, to the extent that the defects in



the Goods or Deliverables are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of the Contract.

## **11 INSURANCE**

11.1 During the term of the Contract and for a period of one year afterwards, the Supplier shall maintain in force, with a reputable insurance company:

- (a) public liability insurance with a limit of at least £5,000,000 per claim;
- (b) employer's liability insurance with a limit of at least £5,000,000 for claims arising from a single event or series of related events in a single calendar year; and
- (c) professional indemnity insurance with a limit of at least £250,000 for claims arising from a single event or series of related events in a single calendar year.

11.2 The Supplier shall produce to the ORR on demand both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each required insurance.

## **12 COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

12.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations from time to time in force; and
- (b) comply with the Mandatory Policies.

## **13 DATA PROTECTION**

13.1 The following definitions apply in this clause 13:

- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

- (d) **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the ORR is the Controller and the Supplier is the Processor.
- 13.4 Without prejudice to the generality of clause 13.2, the ORR will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the ORR for the duration and purposes of the Contract.
- 13.5 Without prejudice to the generality of clause 13.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of the ORR unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the ORR of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the ORR;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the ORR, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the ORR has been obtained and the following conditions are fulfilled:
  - (i) the ORR or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the ORR with respect to the processing of the Personal Data;
- (e) assist the ORR, at the ORR's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the ORR without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the ORR, delete or return Personal Data and copies thereof to the ORR on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and immediately inform the ORR if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

13.6 The Supplier shall not, without the prior written consent of ORR appoint or replace (or change the terms of the appointment of) any other sub-processor in relation to ORR Personal Data. Where consent is provided, the Supplier shall ensure that any sub-contract imposes the same obligations on the sub-processor as set out in this clause 13.

## **14 TERMINATION**

14.1 Without affecting any other right or remedy available to it, the ORR may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) there is a change of control of the Supplier; or
  - (ii) the Supplier commits a breach of clause 12.1.
- (b) for convenience by giving the Supplier 30 days' written notice.

- 14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract 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 Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

## **15 CONSEQUENCES OF TERMINATION**

- 15.1 On termination of the Contract, the Supplier shall immediately deliver to the ORR all Deliverables whether or not then complete, and return all ORR Materials. If the Supplier fails to do so, then the ORR may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 15.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **16 CONFIDENTIALITY**

- 16.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **17 FORCE MAJEURE**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

## **18 GENERAL**

### **18.1 Assignment and other dealings.**

Neither party may assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the other party.

### **18.2 Subcontracting**

The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the ORR. If the ORR consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

### **18.3 Notices**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address set out for the relevant party in the Order (or an address substituted in writing by the party to be served):
- (b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### **18.4 Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 18.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **18.5 Waiver**

- (a) Except as set out in clause 2.5, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

#### **18.6 No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **18.7 Entire agreement**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent

misrepresentation or negligent misstatement based on any statement in the Contract.

**18.8 Third party rights**

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**18.9 Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

**18.10 Governing law**

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

**18.11 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



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