

# CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES (MAY 2022)

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## 1.0 DEFINITIONS AND INTERPRETATION

In these conditions defined terms have capital initials.

- 1.1 “Applicable Law” means all laws, statutes, rules, regulations, codes and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and standards determined by any self-regulatory body which apply from time to time to the provision of Goods and/or Services and performance of the Supplier's obligations pursuant to the Purchase Order.
- 1.2 “Authorised Representative” means the person named on the Purchase Order form “Order Information” section after the words “input by” or subsequently advised in writing by the Company.
- 1.3 “Brexit” means the withdrawal of the United Kingdom of Great Britain and Northern Ireland (“UK”) as a Member State from the European Union (as defined in the TEU), regardless of which countries comprise the UK at such date, including the period of transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty on European Union (“TEU”), which sets out the arrangements for the withdrawal of the UK as a Member State from the European Union (as such arrangements are extended from time to time).
- 1.4 “Business Day” means any day other than a Saturday, Sunday or a public or bank holiday in England and Wales.
- 1.5 “Clause” means the clause referred to under these Purchase Order Conditions.
- 1.6 “Company” means the company issuing and named on the Purchase Order.
- 1.7 “Company Representative” means the person named on the Purchase Order form “Order Information” section after the words “requested by”. or subsequently advised in writing by the Company.
- 1.8 “Confidential Information” has the meaning given to it in Clause 4.
- 1.9 “Data Protection Addendum” means the Data Protection Addendum to these Purchase Order Conditions.
- 1.10 “Data Protection Legislation” means laws and regulations that apply in relation to the Processing of Personal Data including (without limitation) the GDPR, the UK GDPR, the Data Protection Act 2018 and any replacement legislation coming into effect from time to time together with any codes of practice or other guidance issued by a Regulatory Authority.
- 1.11 “Data Subject” means a data subject as defined by the Data Protection Legislation
- 1.12 “Defect” means a part of the Goods and/or Services that are not in accordance with the Purchase Order.
- 1.13 “Delivery” is when the Supplier has done all of the work the Purchase Order requires it to do.
- 1.14 “Delivery Address” means the place or places stated in the Purchase Order for provision of the Goods and/or Services.
- 1.15 “Delivery Date” is the date stated in the Purchase Order for Delivery or, where the Purchase Order requires Delivery within a stated period, the date when the period has elapsed following

the date of the Purchase Order.

- 1.16 “Environment” means any and all of the following: air (including without limitation air within manmade structures or natural structures); water; land (including without limitation the surface and the subsurface of land); and organisms (including without limitation human beings), ecosystems and habitats.
- 1.17 “Environmental Harm” means any adverse impact on or deterioration in the quality of air, land or water or the Environment as a whole, harm to the health of human beings or other organisms, offence to the senses of human being, impairment or interference with ecosystems and habitats, impairment or interference with the amenity of the Environment or any release, discharge or spillage of Hazardous Substances.
- 1.18 “Existing IPRs” means any and all Intellectual Property Rights that are owned by or licensed to either Party and which have been created or otherwise developed independently of the Purchase Order (whether prior to the date of the Purchase Order or otherwise).
- 1.19 “Force Majeure” means any unforeseeable circumstance preventing either Party from performing any or all of its obligations under the Purchase Order which arises from or is attributable to acts or events beyond the control of the Party so prevented including, without limitation, acts of war, civil war, strikes, lockouts (but for the avoidance of doubt excluding strikes, lockouts or other industrial disputes which have their origin within the employees of the Party so prevented or by any default on the part of the Party’s suppliers or subcontractors) riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction that was not in force at the time the Purchase Order was placed, nuclear and radioactive explosion and contamination from any nuclear utility or nuclear weapon and the effects of which a Party could not have avoided and could not have been overcome by the use of reasonable diligence.
- 1.20 “GDPR” means the General Data Protection Regulation (EU) 2016/679.
- 1.21 “Goods and/or Services” means the goods and/or services including works described in the Purchase Order and ‘Goods’ or ‘Services’ shall be construed accordingly.
- 1.22 “Guarantee Period” means a period of eighteen months following Delivery or, in respect of work to remedy a Defect, eighteen months following the remedy or as stated in the Purchase Order or in any Company agreement under which the Purchase Order is issued.
- 1.23 “Intellectual Property Rights” means 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.
- 1.24 “Intermediary” means an entity meeting the definition of sections 51 to 53 of ITEPA.
- 1.25 “Intermediaries Legislation” means Chapter 8 of Part 2 of ITEPA and relevant sections of the Social Security Contributions and Benefits Act 1992, and all other applicable statutes or regulations relating to income tax and National Insurance Contributions (as such may be amended, modified, supplemented, consolidated, replaced or rewritten from time to time)
- 1.26 “ITEPA” means the Income Tax (Earnings and Pensions) Act 2003 as may be amended, modified, supplemented, consolidated, replaced or rewritten from time to time.
- 1.27 “New IPRs” means any and all Intellectual Property Rights created, developed or first reduced to practice by or on behalf of the Supplier in the course or in connection with the Purchase

Order excluding, for the avoidance of doubt, the Supplier's Existing IPRs. Such New IPRs shall include (without limitation) any and all Intellectual Property Rights (a) in any Goods and/or deliverables designed, created or otherwise developed by or for the Company or jointly developed by the Parties, in the course of or in connection with the Purchase Order and (b) discovered, created, developed or reduced to practice in the course of or in connection with providing the Goods and/or Services under the Purchase Order.

- 1.28 "Order Value" means the price of the Goods and/or Services as stated in the Purchase Order.
- 1.29 "Party" means the Company or the Supplier as the context requires, and "Parties" means both of them.
- 1.30 "Personal Data" means personal data (as such term is defined in the Data Protection Legislation) that is Processed by the Supplier in connection with the provision of the Goods and/or Services;
- 1.31 "Process, Processed or Processing" has the meaning set out in the Data Protection Legislation;
- 1.32 "Provide the Goods and/or Services" or "Providing the Goods and/or Services" means to do the work necessary to discharge the Supplier's obligations under the Purchase Order.
- 1.33 "Purchase Order" means a contract made between the Company and the Supplier for the provision of Goods and/or Services stated in the 'purchase order' or 'package order' document ("Purchase Order form") and includes the Purchase Order form, the Purchase Order Conditions, the Specification and any documents to which they refer.
- 1.34 "Purchase Order Conditions" means the Conditions of Contract for the Supply of Goods and Services (May 2022)
- 1.35 "Regulator" means any statutory authority being any governmental or local authority, statutory undertaker or other body of competent jurisdiction which has any jurisdiction with regard to the provision of the Goods and/or Services and/or the performance of the Supplier's obligations under the Purchase Order and/or with whose requirements the Company is required or accustomed to comply and/or with whose systems the Goods and/or Services are or will be connected.
- 1.36 "Regulatory Authority" any competent data protection or privacy authority by which the Company is regulated;
- 1.37 "Regulatory Requirement" means any legally enforceable requirement of any Regulator and any condition, stipulation, proviso, restriction or requirement of any licence, authorisation, consent, omission, order, permit, warrant, approval or notice (whether obtained by the Company or the Supplier) required in order to enable the Supplier to provide the Goods and/or Services or otherwise required in connection with the Goods and/or Services and any condition precedent or other requirement of any Regulator which must be satisfied prior to the grant, issuance, renewal, variation, extension, continuation and/or reconfirmation of any such licence, authorisation, consent, permission, order, permit, warrant, approval or notice.
- 1.38 "Specification" means the drawings, patterns, specification, samples (if any) and the description of the Goods and/or Services contained or referred to in the Purchase Order.
- 1.39 "Supplier" means the person, firm, company or other organisation with whom the Purchase Order is made, including its subcontractors, suppliers or persons engaged to provide the Goods and/or Services.
- 1.40 "UK GDPR" means the GDPR as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.
- 1.41 "Umbrella Company" means an entity which supplies the services of an individual directly or indirectly to the Company and which (i) engages such individual as an employee, (ii) is not a

company in which such individual holds a material interest in accordance with section 61O of ITEPA, (iii) does not make any chain payments to such individual (as defined in Chapter 10, Part 2 of ITEPA) other than those which are fully taxable on the individual as employment income and (iv) is FCSA-accredited.

1.42 The headings in these Purchase Order Conditions shall not affect the interpretation thereof.

1.43 Words in the singular also mean the plural and vice versa.

## **2. SUPPLIER'S OBLIGATIONS**

2.1 The Supplier shall:-

2.1.1 Provide the Goods and/or Services in accordance with the requirements, dates and periods shown in the Purchase Order:

2.1.2 achieve Delivery of Goods and/or Services by the Delivery Date;

2.1.3 ensure that the quantity and description of the Goods and/or Services will be as set out in the Purchase Order;

2.1.4 comply with the Company's written instructions and reasonable directions relating to the Goods and/or Services or otherwise to the Purchase Order;

2.1.5 mark any consignment of Goods with the Supplier's name and address, the Purchase Order number and the Delivery Address shown in the Purchase Order and include a packing note with a description of the Goods and the weight, number or volume of the Goods;

2.1.6 be deemed to have made all necessary enquiries and ascertained the technical, logistic and operational requirements for Providing the Goods and/or Services at the Delivery Address prior to Delivery;

2.1.7 warrant that it has full clear and unencumbered title to all Goods provided under the Purchase Order;

2.1.8 unless otherwise stated in the Purchase Order, submit any design it undertakes to the Company for acceptance, which will not be unreasonably delayed by the Company, prior to proceeding further with Providing the Goods and/or Services.

2.2 The Supplier acknowledges that precise conformity of the Goods and/or Services with the Purchase Order is of the essence of the contract and the Company will be entitled to reject the Goods and/or Services or terminate the Purchase Order if the Goods and/or Services are not in conformance with the Purchase Order.

## **3. HEALTH AND SAFETY**

3.1 Where the Purchase Order requires the Supplier to provide Services at the Delivery Address, the Supplier shall:-

3.1.1 ensure that a competent supervisor is in attendance for the duration of the Services;

3.1.2 ensure that a safe system of work (including risk assessments and method statements) has been submitted to the Company Representative for agreement prior to the commencement of the Services;

3.1.3 ensure that all operatives under its control are competent and have received a site specific induction which include the Company's site rules and procedures;

3.1.4 ensure suitable and sufficient welfare and first aid arrangements are in place prior to

commencement of the Services;

- 3.1.5 provide the Company Representative with emergency arrangements and contacts prior to commencement of the Services;
- 3.1.6 report all incidents to the Company Representative in accordance with the relevant Company procedure, a copy of which will be provided on request;
- 3.1.7 inform the Company Representative of any changes in method of working or changes in design which must be agreed with a revised safe system of work recorded and communicated accordingly.

#### **4. CONFIDENTIALITY**

- 4.1 The Supplier shall keep confidential and shall not disclose or reproduce any information or data (including without limitation Personal Data) processed, collected, obtained, created or developed by the Supplier for the Company or otherwise made available to the Supplier by the Company in connection with the Purchase Order or which otherwise becomes known to the Supplier through the Supplier's performance of the Purchase Order (together the "Confidential Information"). The Supplier shall not mention the Company's name in connection with the Purchase Order or disclose the existence of the Purchase Order in any publicity material or other similar communication without prior written consent of the Company's Public Relations Department.
- 4.2 The Supplier is only permitted to use Confidential Information internally for the purpose of providing the Goods and/or Services and shall disclose it only to its directors, officers, employees or professional advisors who have a need to know the same for this purpose. The Supplier shall procure that any person receiving Confidential Information shall observe the provisions of this Clause 4. (Confidentiality).
- 4.3 The Supplier shall ensure it complies at all times with Data Protection Legislation and shall use appropriate technical and organisational measures to protect any Confidential Information against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, use and/or disclosure.
- 4.4. Where the provision of Goods and/or Services under the Purchase Order includes any Processing of Personal Data (whether incidental or otherwise), the Supplier shall comply with the provisions of the Data Protection Addendum unless (at the request of the Company) the Supplier has entered into a data processing agreement (in which case the provisions of the data processing agreement shall apply).
- 4.5 The Supplier shall promptly notify the Company and copy in [information.security@wessexwater.co.uk](mailto:information.security@wessexwater.co.uk), if there is a reasonable basis to believe that Confidential Information may have been compromised or subject to unauthorised disclosure. The Supplier shall give to the Company all assistance reasonably required by the Company in such respect. Notification shall include, but is not limited to:
  - 4.5.1 a description of the incident including the information types and numbers; and
  - 4.5.2 a description of the actions taken or proposed to be taken to resolve the incident, including actions to mitigate potential adverse effects arising from the incident; and
  - 4.5.3 the name and contact details for an employee of the Supplier from whom further information relating to the incident can be obtained.
- 4.6 The Supplier shall at the request of the Company made at any time and, in any event, on termination of the Purchase Order (for any reason whatsoever) or upon Delivery (whichever is the earliest):
  - 4.6.1 cease all and any further use of any Confidential Information;

- 4.6.2 return to the Company or (at the Company's option) securely destroy all copies (regardless of form, and whether computerised or physical) of Confidential Information and provide to the Company a Certificate of such destruction signed by a responsible officer of the Supplier;
  - 4.6.3 so far as is (a) reasonably practicable and/or (b) permitted by law and/or (c) permitted by any applicable professional ethics, guidelines and practices, destroy all analyses, compilations, studies and other documents prepared by the Supplier which contain or otherwise reflect Confidential Information;
  - 4.6.4 delete or remove any Confidential Information from any computer, word processor or other similar device (other than copies of any computer records and files containing or reflecting any Confidential Information which have been created pursuant to its automatic archiving and back-up procedures, if any) and
  - 4.6.5 provide to the Company a certificate signed by a responsible officer of the Supplier confirming that the requirements of this Clause 4.6 have been complied with in full.
- 4.7 The Supplier shall indemnify and keep indemnified the Company against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities of whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Company and arising out of or in connection with any breach by the Supplier, its employees, representatives, agents or sub-contractors, of its obligations under this Clause 4. Any cap on liability provided under the Purchase Order shall not apply to the indemnity given by the Supplier under this Clause 4.

## **5 QUALITY AND MARKING**

- 5.1 Where Goods are provided under the Purchase Order, such Goods or, as the case may be, Goods and Services shall be of satisfactory quality and fit for the purpose for which they are required and shall meet the quality, description and performance stated or referred to in the Purchase Order and shall be equal in all respects to submitted and accepted designs, samples and patterns.
- 5.2 The Goods and/or Services shall comply with all Applicable Laws and with the Specification.
- 5.3 The Supplier shall maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Company, its customs, relevant British Standards and statutory and regulatory bodies;
- 5.4 Goods shall be suitably and sufficiently marked and labelled with information and advice necessary to instruct and warn of any hazards to health and/or safety.
- 5.5 Where only Services (excluding Goods) are provided under the Purchase Order, these will be carried out with all reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's profession undertaking services similar in scope and character to the Services pursuant to the Purchase Order, utilising appropriate equipment and materials and following good industry practice.

## **6. INTERPRETATION OF SPECIFICATIONS**

- 6.1 Any discrepancies or difference between the Parties as to the intent or meaning of anything within the Purchase Order shall be subject to the decision of the Company which shall be binding on both Parties.
- 6.2 The Supplier shall provide all labour, designs, patterns, implements, carriage and all minor details whether or not described in the Specification or shown on the drawings, but which may be necessary in order to provide the Goods and/or Services.

## **7.0 INTELLECTUAL PROPERTY**

- 7.1 Each Party shall keep ownership of its Existing IPRs. The Supplier grants to the Company a non-exclusive, royalty-free, perpetual, irrevocable, transferable, world-wide licence (with the right to sub-license) to use, copy, modify, adapt and otherwise exploit the Supplier's Existing IPRs in order to:
- (a) use the Goods and/or Services (or undertake other work at the Delivery Address);
  - (b) use the New IPRs.
- 7.2 Any New IPRs created under the Purchase Order shall be owned by the Company. The Company gives the Supplier a licence to use any Company Existing IPRs for the sole purpose of fulfilling its obligations under the Purchase Order and not for any other purpose.
- 7.3 Where a Party acquires ownership of Intellectual Property Rights incorrectly under the Purchase Order, it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 7.4 The Supplier shall not have the right to use the Company's Intellectual Property Rights, except as provided under this Clause 7 or as otherwise expressly agreed in writing in advance by the Company.
- 7.5 The Supplier shall indemnify the Company against all actions, claims, damages, liabilities, losses, costs, expenses or proceedings arising from any infringement or alleged infringement of any Intellectual Property Right, by the use or possession of any part of the Goods and/or Services or the use of the New IPRs. Any cap on liability provided under the Purchase Order shall not apply to the indemnity given by the Supplier under this Clause 7.

## **8. COMMUNICATION AND NOTICES**

- 8.1 Each instruction, submission, notification, reply and other communication which the Purchase Order requires is communicated in English and in a form which can be read, copied and recorded.
- 8.2 Notices from the Supplier in relation to Clause 18. (Termination and Cancellation) and Clause 19 (Force Majeure) shall be sent by recorded delivery post, addressed to the Company Secretary, at the Company's registered address and a copy sent immediately to the Company Representative by either email or fax and followed up with a signed copy by first class post. Notices relating to other matters shall be sent to the Company Representative by first class post or email. Unless stated otherwise, notices from the Company to the Supplier shall be sent by first class post to the other Party's last known place of abode or principal place of business or registered office or by email. Notices posted by either Party shall be deemed to have been received three Business Days after the date of posting.

## **9. VARIATIONS**

- 9.1 The Company Representative may instruct written variations to the Purchase Order changing the Goods and/or Services, the Delivery Date and the Delivery Address giving reasonable notice to the Supplier where possible. The Supplier shall comply with such instructions.
- 9.2 The Order Value shall be amended by the value of variations. Variations shall be valued by the Company with reference to the Order Value and any prices within it or, if no suitable prices exist, at reasonable market rates or the Company may invite the Supplier to provide a quotation for the cost of the variation.
- 9.3 Should the Company prevent the Supplier from meeting the Delivery Date, by virtue of a variation or for any other cause, the Company shall make a suitable adjustment to the Delivery Date and notify the Supplier accordingly.
- 9.4 No variation to the Purchase Order shall have effect unless it has been agreed and confirmed

in writing by the Company Representative.

## **10. PAYMENT**

- 10.1 Unless otherwise stated in the Purchase Order, the Supplier shall send to the Company via the email address stated in the Purchase Order, following delivery, a detailed priced invoice for the value of the Goods and/or Services provided, stating the Purchase Order number and item numbers.
- 10.2 The Company shall pay the Order Value of the Goods and/or Services provided to the Supplier in the manner stated in the Purchase Order or if no manner is stated, following Delivery and against the Supplier's correctly submitted invoice. Unless otherwise stated in the Purchase Order, payment will be made by the end of the Company's accounting month following the accounting month of Delivery or receipt of invoice, whichever is the later.
- 10.3 Payment by the Company to the Supplier will be made by either BACS transfer or credit card.
- 10.4 Interest on late payment may be claimed by the Supplier at the rate of 8% plus the Bank of England base rate, calculated on a daily basis and compounded annually.
- 10.5 Unless otherwise stated in the Purchase Order, the Order Value and any prices forming part of it are exclusive of Value Added Tax.
- 10.6 The Supplier acknowledges and agrees that the Company shall be entitled to make any deductions which the Company may be required by law to make from any payment for the Goods and/or Services.

## **11. RECOVERY OF SUMS DUE AND SET OFF**

- 11.1 The Company may set off any sum of money or obligation due to the Supplier under the Purchase Order or any other order against any sum of money or obligation owed by the Supplier to the Company under the Purchase Order or any other order or other agreement between the Parties.
- 11.2 Where no sum of money or obligation is due to the Supplier under the Purchase Order or any other order the Company may invoice the Supplier for any sum of money or obligation owed by the Supplier to the Company under the Purchase Order or any other order or other agreement between the Parties.

## **12. INSPECTION AND TESTING**

- 12.1 The Supplier shall carefully inspect and test the Goods and/or Services for compliance with the Specification. The Supplier shall, if requested by the Company, give the Company reasonable notice of such tests and allow the Company to witness the tests. If requested, the Supplier shall supply the Company with certificates of inspections and tests.
- 12.2 The Company may inspect and test the Goods and/or Services during manufacture, processing, transit, storage or installation and the Supplier shall provide facilities as may reasonably be required by the Company.
- 12.3 Where site tests are required by the Specification they shall be carried out after installation and at least seven days' notice in writing shall be given to the Company Representative inviting a delegate of the Company to witness the tests. Where any site test is failed, any necessary adjustments shall be carried out by the Supplier and the tests shall be repeated in the presence of the Company delegate at a time agreed with the Company.
- 12.4 The Company may use other suppliers to carry out the necessary adjustments and/or modifications if the site tests are not repeated and passed in a reasonable time. The Company may recover the additional cost of using such other suppliers from the Supplier.
- 12.5 Upon request by the Company, the Supplier shall, at the Supplier's sole expense, grant the



Company and/or any of the Company's nominated sub-contractors free and unrestricted access to the Supplier's premises and records as the Company may reasonably require without limitation for the purposes of inspection of storage, plant, equipment, transport, data, accounts and other records and assets relating to the Goods and/or Services for the purposes of verifying the Supplier's compliance or ability to comply with its obligations under the Purchase Order. Such records shall be maintained for a minimum of 6 (six) years following the performance of the obligation under the terms of the Purchase Order.

### **13. DELAY AND DAMAGES**

- 13.1 The Company may recover from the Supplier all additional cost, loss and expense reasonably incurred by the Company which is properly attributable to the Supplier's failure to meet the Delivery Date (save where Clause 13.3 applies) or its breach of the Purchase Order or arises from termination of the Purchase Order pursuant to Clause 18.3 including, without limitation, all additional costs incurred by the Company in obtaining the Goods and/or Services (or any part of them) in substitution from an alternative supplier.
- 13.2 Failure by the Supplier to provide the Goods and/or Services within the required time will constitute a material breach of contract.
- 13.3 Where liquidated damages for delay are stated in the Purchase Order to be applicable and an amount payable in respect of liquidated damages is included, in the event that the Supplier fails to meet the Delivery Date, the Supplier shall pay to the Company the liquidated damages at the rate stated in the Purchase Order for the period from the Delivery Date until Delivery.

### **14. SUPPLIER'S RESPONSIBILITY FOR THE GOODS AND/OR SERVICES**

- 14.1 Until Delivery, risk in the Goods and/or Services shall rest with the Supplier.
- 14.2 Unless otherwise agreed in writing all tools, patterns, drawings, designs and other documents or equipment supplied by, or on behalf of, the Company shall be and remain the property of the Company and the Supplier shall be responsible for their safe custody and return upon request of the Company or immediately upon termination. They shall not be disposed of by the Supplier to any third party or used except for the purpose of Providing the Goods and/or Services.
- 14.3 Property in the Goods shall pass to the Company when they are delivered to the Delivery Address and the Goods are found by the Company to be in accordance with the Purchase Order.
- 14.4 In the Provision of Goods and/or Services the Parties do not intend on creating any relationship of employer and employee or otherwise between the Supplier personnel and the Company. The Supplier shall at all times remain responsible for effecting all statutory deductions, insurances and accruals in respect of the Suppliers' personnel.

### **15. DEFECTS**

- 15.1 Defects arising prior to the end of the Guarantee Period shall be remedied by the Supplier at the Supplier's cost in accordance with the Company's reasonable instructions, or if not instructed, as soon as reasonably practicable and in any event within one month of notification of Defect. The Company may elect whether the remedy is achieved by repair, replacement or rework.
- 15.2 Other than at the Company's discretion, defective Goods will only be returned to the Supplier once replacement Goods have been provided. Goods returned shall be sent carriage forward to the Supplier at the risk and cost of the Supplier. Repair or replacement Goods shall themselves be subject to the provisions of the Guarantee Period.
- 15.3 If the Supplier fails to remedy a Defect in accordance with this Clause 15, the Company may, having given written notice to the Supplier, assess the cost of having the Defect remedied by another supplier and recover the reasonable costs incurred from the Supplier.

15.4 The Parties may agree that a Defect will not be remedied in return for a reduction in the Order value. A variation shall be made confirming the agreement and the reduction to the Order Value.

## **16. ASSIGNMENT**

16.1 The Company may assign or transfer the Purchase Order or any part of it at will.

16.2 The Supplier may not sub-contract, assign or transfer the Purchase Order or any part of it without the consent in writing of the Company. Such consent shall not relieve the Supplier from any liability or obligation under the Purchase Order and where consent has been given by the Company, the Supplier further undertakes to comply with (and shall procure that any sub-contractor, assignee or transferee comply with) the Supplier's obligations under Clause 22 (Provision of Services through an Intermediary). The Supplier acknowledges and agrees that the Company may reasonably withhold its consent to such a proposal if it, acting in good faith, considers that the Supplier's proposal to sub-contract, assign or transfer its obligations under the Purchase Order is to such number of sub-contractors, or to such a degree or in such a manner as might jeopardise the efficient or effective performance of the Supplier's obligations or delivery of the Goods and/or Services. For the avoidance of doubt, this Clause 16.2 applies to the engagement by the Supplier of any agency or self-employed staff to provide any of the Services.

## **17. INDEMNITY AND INSURANCE**

17.1 Unless otherwise stated in the Purchase Order, the Supplier shall effect and maintain insurance for:

17.1.1 Public liability insurance in respect of loss of or damage to property, including property owned by the Company, (other than the Goods and/or Services) and for bodily injury to or death of a person (other than an employee of the Supplier) arising from or in connection with the provision of the Goods and/or Services. The minimum limit of indemnity shall be £5,000,000 for any one occurrence and unlimited as to the number of occurrences and the insurance shall be maintained until the end of the Guarantee Period.

17.1.2 Employer's liability insurance in respect of death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with the Purchase Order. The minimum level of indemnity shall be £10,000,000 (but a sub-limit of £5,000,000 for terrorism claims will be accepted) and the insurance shall be provided until the end of the Guarantee Period.

17.1.3 Property damage insurance to cover physical loss or damage to the Goods and/or Services (including any free issue materials provided to the Supplier under the provisions of Clause 20) which may be sustained prior to Delivery.

17.1.4 Professional indemnity insurance covering the liability of the Supplier in respect of the design and specification of the Goods and/or Services where liability on the part of the Supplier for design and specification of the Goods and/or Services applies under the Purchase Order. The minimum level of indemnity shall be £5,000,000 each and every claim and shall be provided until 6 years after Delivery.

17.2 The Supplier shall ensure that the interests of the Company are indemnified under the insurances to be affected and maintained by the Supplier under Clause 17.1 in the following manner:

17.2.1 Under the provisions of an indemnity to principals clause in respect of public liability and employer's liability insurance

17.2.2 As an additional insured in respect of property damage insurance

- 17.3 The insurances shall be affected with well established insurance companies or underwriters with a Standard and Poor's rating of A- or above. When required by the Company, the Supplier shall supply to the Company documentary evidence that the Insurances required under Clause 17 have been taken out and are being maintained.
- 17.4 The Supplier shall be liable for and shall indemnify the Company against any expense, liability, loss, claim, damages, costs or proceedings arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or caused by the Provision of the Goods and/or Service, except to the extent that the same is due to any negligence or default on the part of the Company or of any person for whom the Company is responsible (including other contractors and their servants or agents employed by the Company).
- 17.5 The Supplier shall be liable for, and shall indemnify the Company against, any expense, liability, loss, claim, damages, costs or proceedings in respect of any injury or damage to any property real or personal (including injury or damage to property of the Company) insofar as such injury or damage arises out of or is caused by the carrying out of the Provision of Goods and/or Services by the Supplier and to the extent that the same is due to any act, omission, negligence, breach of statutory duty or default of the Supplier, its servants or agents or any of the Supplier's sub-contractors or their servants or agents.
- 17.6 Nothing in any Company agreement or Purchase Order excludes or limits the liability of a Party for death or personal injury caused by its own negligence, for fraudulent misrepresentation by it, for fraud or for any matter for which it would be illegal for that Party to exclude or to attempt to exclude its liability.
- 17.7 The Supplier shall indemnify, and keep indemnified, the Company against any expense, liability, loss, claim, costs or proceedings the Company may suffer or incur as a result of any claims made against it in respect of TUPE, National Insurance contributions, income tax and other statutory charges arising out of any Supplier personnel being found or considered to be an employee of the Company.
- 17.8 Save in respect of the provisions of Clause 17.6, the Company's liability to the Supplier under or in connection with the Purchase Order, or any Company agreement with the Supplier under which the Purchase Order is made, howsoever arising including, without limitation, negligence, breach of contract or breach of statutory duty shall be limited to the Order Value.

## **18. TERMINATION AND CANCELLATION**

- 18.1 The Company may terminate the Purchase Order immediately by written notice or cancel any part of it by giving notice in writing:
- 18.1.1 if the Supplier has failed, or in the opinion of the Company is likely to fail to:-
- (a) Provide the Goods and/or Services or remedy a Defect in accordance with the Purchase Order;
  - (b) achieve Delivery by the Delivery Date; or
  - (c) comply with an instruction of the Company relating to the Goods and/or Services or otherwise to the Purchase Order;
- 18.1.2 without prejudice to the generality of the foregoing Clauses 18.1.1 (a) and (b), in accordance with Clause 2.2 (Supplier's Obligations), Clause 19.3 and 19.6 (Force Majeure), Clause 26.1 (Anti-Corruption), Clause 27.2 (Prevention of the Facilitation of Tax Evasion) and Clause 31.4 (Environmental Sustainability and Social Responsibility).
- 18.2 Either Party shall be entitled to terminate the Purchase Order immediately by giving written notice to the other if:-

- 18.2.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other Party;
  - 18.2.2 the other Party makes any composition or voluntary arrangement with its creditors or enters into administration or a moratorium comes into force in respect of the other Party (within the meaning of the Insolvency Act 1986);
  - 18.2.3 the other Party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other Party under the Purchase Order);
  - 18.2.4 an insolvency practitioner has been appointed by the other Party; or
  - 18.2.5 the other Party ceases or threatens to cease to carry on business.
- 18.3 If the Company terminates the Purchase Order or cancels any part of it under Clause 18.1, the Company may recover from the Supplier the forecast additional cost to the Company of procuring the Goods and/or Services from an alternative supplier.
- 18.4 The Company may terminate the Purchase Order immediately by written notice or cancel any part of it for any other reason in which case the Company shall pay the Supplier his reasonable and substantiated costs incurred up to the date of termination or cancellation in order to provide the Goods and/or Services in whole or part as the case may be. For the avoidance of doubt, this Clause 18.4 does not apply if the Company terminates or cancels any part of the Purchase Order under Clause 19 or as a result of a Supplier's default under the Purchase Order.
- 18.5 The provisions of the Purchase Order that expressly or by implication have effect after termination of the Purchase Order including, without limitation, those in Clause 1 (Definitions and Interpretation), Clause 4 (Confidentiality), Clause 7 (Intellectual Property), Clause 8 (Communication and Notices), Clause 11 (Recovery of Sums Due and Set Off), Clause 15 (Defects), Clause 16 (Assignment), Clause 17 (Indemnity and Insurance), Clause 18 (Termination and Cancellation), Clause 22 (Provision of Services Through an Intermediary), Clause 23 (Waiver), Clause 24 (Rights of Third Parties), Clause 25 (Severance), Clause 27 (Prevention of the Facilitation of Tax Evasion), Clause 31 (Environmental Sustainability and Social Responsibility) and Clause 32 (Law and Jurisdiction) will continue to be enforceable notwithstanding termination.
- 18.6 Termination of the Purchase Order shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Purchase Order which existed at or before the date of termination.

## **19. FORCE MAJEURE**

- 19.1 Subject to Clause 19.4, neither Party shall be liable for any failure to perform, or delay in performing, an obligation (other than indemnity obligations) if and to the extent that the failure or delay is caused by Force Majeure.
- 19.2 Where the Supplier is unable to perform its obligations by reason of Force Majeure the Supplier shall immediately notify the Company Representative in writing of its wish to claim relief under Clause 19.1 and provide an estimate of its duration, details of the obligations which are affected by Force Majeure and the way in which and the extent to which the Party considers that the performance of its obligations is likely to be affected.
- 19.3 Where the Supplier is unable to Provide the Goods and/or Services by reason of Force Majeure the Company shall assess the information provided under Clause 19.2 and either alter the Delivery Date accordingly, or cancel any part of or terminate the Purchase Order.
- 19.4 For the period of the Force Majeure each Party shall:

- 19.4.1 take all reasonable steps available to minimise the effects of the Force Majeure on the performance of its obligations and to resume full performance of the Purchase Order without reasonably avoidable delay;
  - 19.4.2 permit, and use all reasonable efforts to facilitate, any efforts that the other Party may make to obtain alternative supplies or services;
  - 19.4.3 update the information provided in the notice under Clause 19.2 at least once a week throughout the period during which the performance of its obligations is affected.
- 19.5 For the avoidance of doubt, if the Supplier is relieved from performing any obligation affected by Force Majeure it shall not be entitled to payment for the performance of that obligation in respect of the period for which relief is obtained.
- 19.6 If the Party claiming relief under Clause 19.1 is prevented by the Force Majeure from wholly or substantially performing its obligations under the Purchase Order for a period of more than 3 months either Party may terminate the Purchase Order by written notice to the other Party.

## **20. FREE ISSUE MATERIALS**

- 20.1 The Company may provide free issue materials to the Supplier for use under the Purchase Order. The materials remain the property of the Company and shall be maintained by the Supplier securely and in good condition. Any surplus materials shall be disposed of at the Company's discretion. Waste of free issue materials shall be made good at the Supplier's expense.
- 20.2 Delay to Delivery or Defects relating to free issue materials shall be notified in writing by the Supplier to the Company Representative and the Company shall assess the effect on the Delivery Date and the Purchase Order Value and notify the Supplier accordingly.

## **21. BONA FIDES OF WORKPEOPLE**

- 21.1 The Supplier shall, if required, provide accreditations and permits for the labour and staff it uses, with a form of authority acceptable to the Company for each person whom it requires to have access to the Company's property and shall keep a record of all forms provided. Forms and passes shall be surrendered as soon as access is no longer required.
- 21.2 The Company shall be entitled, at its discretion, to request that an individual under the control of the Supplier be removed from its property and, in the event of any such request, the Supplier shall forthwith remove such individual and arrange for their replacement, if required, to Provide the Goods and/or Services.
- 21.3 The Supplier shall at all times ensure its business and supply chains meet their obligations under the Modern Slavery Act 2015, and shall demonstrate the steps it takes to monitor compliance at the request of the Company.

## **22. PROVISION OF SERVICES THROUGH AN INTERMEDIARY**

- 22.1 The Supplier shall not provide Services to the Company using an Intermediary without the Company's prior written consent in accordance with Clause 16.2.
- 22.2 The Company will, based on the information it reasonably regards as being relevant, decide whether the circumstances under which the Services are provided fall within or outside the scope of the Intermediaries Legislation.
- 22.3 Without prejudice to Clause 22.1, where Services are provided via an Intermediary at any time during the term of the Purchase Order, the Supplier warrants and undertakes that

- (a) it shall fully cooperate with all requests, processes and/or checks as the Company may require at any time to assess whether the circumstances under which the Supplier provides or will provide the Services fall or will fall within or outside the scope of the Intermediaries Legislation (“Company’s Off-payroll Working Assessment”);
  - (b) it shall ensure that all such information it provides as part of the Company’s Off-payroll Working Assessment or Company checklist, questionnaire, request for information or otherwise shall be accurate, up to date and complete; and
  - (c) it shall notify the Company without delay if, after the Services have commenced, it has reason to believe the circumstances under which it provides or will provide the Service have changed or will change so as to fall within or outside the scope of the Intermediaries Legislation (as the case may be). Notwithstanding the foregoing, the Supplier shall update the Company promptly where any of the information required under this Clause 22.3 changes at any time during the term of the Purchase Order.
- 22.4 Following the Company’s Off-payroll Working Assessment, the Company will issue the Supplier and the worker a status determination statement confirming if the Services fall within or outside the scope of the Intermediaries Legislation. Any appeal against the status determination statement should be made within 30 days of the date of issue in accordance with the appeals procedure detailed therein.
- 22.5 The Company reserves the right to review the outcome of the Company’s Off-payroll Working Assessment at any time. Where this review changes the outcome of the Company’s Off-payroll Working Assessment the Company (at its sole discretion) reserves the right to amend the prices to take into account such changes (including for the avoidance of doubt, reduce the prices in the event that the circumstances under which the Supplier provides or will provide the Services have changed or will change so as to fall within the scope of the Intermediaries Legislation).
- 22.6 Where the Supplier shares Personal Data with the Company, the Supplier warrants it has carried out an assessment of the lawful basis for sharing the Personal Data and that an appropriate fair processing notice has been brought to the attention of the Data Subject for such sharing to take place.
- 22.7 If the Company determines that the Services fall within the scope of the Intermediaries Legislation and:
  - (a) the Services are provided directly to the Company by the Intermediary, then the Company will deduct from the payment due to the Supplier under the Purchase Order any PAYE, Income Tax, National Insurance Contributions and any other taxes and deductions payable for which the Company is required to make payment under the Intermediaries Legislation;
  - (b) the Services are provided indirectly to the Company by the Supplier using an Intermediary, then the Company will notify the Supplier that the Intermediaries Legislation applies to the Intermediary and the Supplier warrants and undertakes that (notwithstanding the receipt of such notice) it shall comply with its responsibilities and obligations under the Intermediaries Legislation.
- 22.8 Without prejudice to the provisions of this Clause 22, where Services are provided indirectly to the Company by the Supplier (or an Intermediary) using an Umbrella Company, the Supplier warrants and undertakes that:
  - (a) such Umbrella Company is properly accredited by the FCSA (Freelancer & Contractor Services Association); and
  - (b) all payments made by such Umbrella Company to or in respect of any individual providing Services to the Company are fully taxable (and taxed) either as earnings from employment with the Umbrella Company or under Part 2 of ITEPA.

22.9 The Supplier shall be liable for and shall indemnify and keep indemnified the Company against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever suffered or incurred by the Company as a result of any breach by the Supplier of this Clause 22 (including specifically, but without limitation, any proceedings, claims or demands by HM Revenue & Customs and any successor, equivalent or related body pursuant to the Intermediaries Legislation). The Company may at its option satisfy such indemnity (in whole or in part) by way of deduction from payment due to the Supplier under the Purchase Order or any other order or other agreement between the Parties. Any cap on liability provided under the Purchase Order shall not apply to the indemnity given by the Supplier under this Clause 22.9.

## **23. WAIVER**

23.1 No failure or delay by a Party to exercise any right or remedy provided under the Purchase Order or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **24. RIGHTS OF THIRD PARTIES**

24.1 Neither the Company or Supplier confers or purports to confer on any Third Party any benefit or right to enforce any term of the Purchase Order under the Contracts (Rights of Third Parties) Act 1999.

## **25. SEVERANCE**

25.1 If a provision of the Purchase Order is held to be illegal, invalid or unenforceable, in whole or in part the provision will be severed from the Purchase Order and rendered ineffective and the Parties intend that the legality, validity and enforceability of the remainder of the Purchase Order shall not be affected.

25.2 In the case of any discrepancy or ambiguity or conflict between any of the documents forming the Purchase Order, the order of precedence shall follow:

- the Purchase Order form
- the Purchase Order Conditions
- the Specification

## **26. ANTI-CORRUPTION**

26.1 The Company may terminate the Purchase Order forthwith by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss resulting from such termination if the Supplier shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Purchase Order or any other contract with the Company or for showing or forbearing to show favour or disfavour to any person in relation to the Purchase Order or any other contract with the Company or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Company the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Bribery Act 2010.

26.2 Any clause in the Purchase Order limiting the Supplier's liability does not apply to this Clause 26 (Anti-Corruption).

## **27. PREVENTION OF THE FACILITATION OF TAX EVASION**

27.1 The Company takes a zero-tolerance approach to tax evasion. The Supplier shall:

- 27.1.1 not (and shall procure that its officers, employees, contractors, agents or consultants shall not) engage in any form of facilitating tax evasion, whether under UK law or under the law of any foreign country. The Supplier shall immediately report to the Company any request or demand from a third party to facilitate the evasion of tax, or any concerns that such a request or demand may have been made;
- 27.1.2 at all times comply with the Company's policy on Failure to Prevent the Facilitation of Tax Evasion as the Company may update from time to time; and
- 27.1.3 provide such supporting evidence of compliance (including without limitation any current risk assessment and action plan) as the Company may reasonably request from time to time.
- 27.2 Notwithstanding any other provision of the Purchase Order, failure to comply with this Clause 27 shall entitle the Company to terminate the Purchase Order forthwith (without any liability) by giving notice in writing to the Supplier.
- 27.3 The Supplier shall indemnify and keep indemnified the Company against any loss, damages, costs, penalties or other liabilities whatsoever caused to or suffered by the Company arising out of any breach of this Clause 27. Any clause in the Purchase Order limiting the Supplier's liability does not apply to this Clause 27.

## **28 ENTIRE AGREEMENT**

- 28.1 The Purchase Order shall have precedence over all other terms and conditions which the Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by the Supplier irrespective of their date of communication to the Company. The Company will not be liable in respect of a Purchase Order or any variation thereof other than those issued or confirmed on an official Purchase Order by an Authorised Representative of the Company.
- 28.2 The Purchase Order, and any Company agreement with the Supplier under which the Purchase Order is made, is the entire agreement between the Parties and supersedes all prior proposals, promises, agreements, arrangements, representation, misrepresentation, understandings and misunderstandings between the Parties and relating to its subject matter (whether oral or in writing). The terms of the Purchase Order may only be varied in accordance with Clause 9 (Variations).
- 28.3 Each Party acknowledges that in entering into the Purchase Order it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether a Party to the Purchase Order or not) that is not set out in the Purchase Order or the documents referred to in it. Subject to Clause 32.3, each Party waives all rights and remedies which, but for this Clause 28, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to any Party in respect of any representation, warranty, collateral contract or other assurance that is set out in the Purchase Order (or any document referred to in it) is for breach of contract under the terms of the Purchase Order. Nothing in the Purchase Order shall, however, limit or exclude any liability for fraud.

## **29. DISPUTE RESOLUTION**

- 29.1 Any dispute arising out of or in respect of the Purchase Order may be referred in writing by either Party to a dispute resolution committee comprising the Company Representative and the Supplier Representative. Failing resolution of the dispute by the dispute resolution committee within a period of 10 (ten) Business Days of the reference to them the dispute may immediately be referred in writing by either Party for determination to the Company's procurement team and Supplier sales manager who shall seek to reach agreement of the dispute within 1 (one) calendar month.



### **30. UNITED KINGDOM WITHDRAWAL FROM THE EUROPEAN UNION**

- 30.1 Save as provided in Clauses 9 or 30.2, no change, event or occurrence arising out of or in connection with Brexit will:
- 30.1.1 affect any of the Supplier's obligations under the Purchase Order;
  - 30.1.2 have the effect of varying or invalidating any term of the Purchase Order or of discharging or excusing the Supplier's performance under the Purchase Order;
  - 30.1.3 permit the Supplier to increase any of its prices or charges or to exercise any right or discretion to do the same; or
  - 30.1.4 permit the Supplier to exercise any contractual or other right of termination or give the Supplier the right to vary the Purchase Order.
- 30.2 If, as a consequence of an event associated with Brexit, the Supplier is no longer permitted by Applicable Laws to perform any part of the Purchase Order, where possible, any terms of the Purchase Order which conflict with such Applicable Laws shall be amended to conform to the requirements of said laws whilst ensuring that the Goods and/or Services are provided to a standard equal or higher than that required under the Purchase Order.
- 30.3 The Supplier acknowledges and agrees that any impact of Brexit on its ability to perform its obligations under the Purchase Order shall not entitle the Supplier to claim relief under Clause 19.

### **31 ENVIRONMENTAL SUSTAINABILITY AND SOCIAL RESPONSIBILITY**

- 31.1 Environmental sustainability - the Supplier shall:
- 31.1.1 at all times be responsible for and take reasonable and proper steps for protecting the Environment and shall ensure that in Providing the Goods and/or Services it does not cause Environmental Harm. In doing so, the Supplier shall comply with all Regulatory Requirements;
  - 31.1.2 be liable for, and shall indemnify the Company against any expense (including without limitation site investigation and remediation costs), liability, loss, claim, proceedings (including without limitation informal and formal enforcement proceedings brought by a Regulator), or Regulatory Requirements (including without limitation compulsory remediation required by a Regulator) arising in respect of Environmental Harm as a result of any breach of contract, breach of statutory duty or negligence by the Supplier (or any of its employees, representatives, agents or sub-contractors).
- 31.2 Social responsibility - the Supplier represents, warrants and undertakes that it shall:
- 31.2.1 not employ, engage or otherwise use any child labour;
  - 31.2.2 not use any form of forced labour and shall not engage in or support the use of corporate punishment, mental or physical coercion or verbal abuse;
  - 31.2.3 pay each employee at least the minimum wage and provide each employee with all legally mandated benefits;
  - 31.2.4 comply with all Applicable Laws and industry standards on working hours and to ensure that wages are sufficient to meet the basic needs of its personnel;
  - 31.2.5 not (and procure that its personnel shall not) discriminate against any person (whether on the basis or race, gender, disability, age, religion, belief or sexual orientation or otherwise) and shall ensure that its policies and practices comply with the requirements of all Applicable Laws;
  - 31.2.6 respect the right of workers to freedom of association and collective bargaining;

31.2.7 ensure that its subcontractors and suppliers comply with the requirements of this Clause 31.2, and shall regularly oversee observance of such requirements.

31.3 The Supplier shall notify the Company immediately upon becoming aware of, or suspecting, any actual or potential breach of this Clause 31.

31.4 Notwithstanding any other provision of the Purchase Order, failure to comply with this Clause 31 shall entitle the Company to terminate the Purchase Order forthwith (without any liability) by giving notice in writing to the Supplier.

## **32 LAW AND JURISDICTION**

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

32.2 Each Party irrevocably submits to the exclusive jurisdiction of the English Courts in relation to all matters arising out of or in connection with the Purchase Order or its subject matter or formation (including non-contractual disputes or claims).

32.3 For the avoidance of doubt, nothing in the Purchase Order shall relieve the Supplier of its statutory or common law responsibilities or obligations in relation to the Goods and/or Services (or any part of it).