



## City Security Services Full Terms and Conditions

### 1. Interpretation

**The following definitions and rules of interpretation apply in this Agreement.**

#### 1.1 Definitions.

“Applicable Laws”	all applicable laws, statutes, regulations and codes from time to time in force.
“Assignment Instructions”	the specific instructions from the Customer to the Supplier for the provisions of the Services, as detailed in the Heads of Terms.
“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.
“Change Order”	has the meaning given in clause 9.1.
“Charges”	the sums payable for the Services, as set out in the Heads of Terms.
“Commencement Date”	the date on which this agreement is signed and dated by both parties, and therefore comes into force.
“control”	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
“Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures”	as defined in the Data Protection Legislation.
“Customer”	the Customer detailed in the Heads of Terms.
“Customer’s Equipment”	any equipment, including tools, systems or facilities provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in the Heads of Terms.
“Customer Materials”	all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 6.1.5.
“Customer Representative”	the representative appointed by the Customer, in accordance with clause 6.1.2, to communicate with the Supplier for the purposes of the provision of Services under this Agreement.
“Data Protection Legislation”	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
“Deliverables”	any output of the Services by the Supplier to the Customer, as specified in the Heads of Terms.
“Heads of Terms”	the Heads of Terms agreed between the Parties, as set out in the Heads of Terms.
“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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 Customer’s business policies, as amended by notification to the Supplier from time to time.
“Services”	the services as set out in the Heads of Terms, including services which are incidental or ancillary to such services.
“Supplier”	City Security Services Limited, incorporated and registered in England and Wales with company number 02814854 whose registered office is at 4 Cyrus Way, Hampton, Peterborough, England, PE7 8HP.
“Supplier’s Equipment”	any tools or equipment used by the Supplier directly or indirectly in the supply of the Services, including any such items specified in the Heads of Terms, including but not limited to torches, padlocks, chains, handcuffs and other security devices and materials and documents, that the Supplier provides to the Customer to enable the Supplier to provide the Services, and to which title remains with the Supplier.
“Term”	The duration of this Agreement from the Commencement Date until the date of termination specified in the Heads of Terms or the termination of the Agreement in accordance with clause 15.
“UK Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
“VAT”	value added tax chargeable in the UK.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party’s personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes email but not fax.



- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. BASIS OF AGREEMENT

This Agreement applies to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. Commencement and duration

- 3.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until the date specified in the Heads of Terms, when it shall terminate automatically without notice.
- 3.2 Subject to clause 3.3, if no termination date is specified in the Heads of Terms, this Agreement shall continue for 36 months from the Commencement Date and shall automatically renew every 12 months without further notice by either party.
- 3.3 Where the Supplier is providing key-holding services to the Customer, this Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), for a period of 36 months and it shall automatically renew for further 36-month periods without further notice by either party.
- 3.4 The Supplier shall provide the Services to the Customer in accordance with the terms and conditions of this Agreement.

## 4. TUPE

The provisions of Schedule 1 relating to TUPE shall apply when this Agreement commences.

## 5. Supplier's responsibilities

During the Term, the Supplier shall:

- 5.1 supply the Services, and if applicable deliver the Deliverables, to the Customer in accordance with this Agreement in all material respects;
- 5.2 comply with the Assignment Instructions and any other reasonable written instructions given by the Customer;
- 5.3 in performing its obligations under this Agreement, comply with:
- 5.3.1 the Applicable Laws; and
  - 5.3.2 the Mandatory Policies, provided that the Customer shall give the Supplier not less than 1 months' notice of any change to such policies,

and changes to the Services required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in clause 9 (Change control);

- 5.4 observe all applicable health and safety and security requirements that apply at the Customer's premises and that have been clearly communicated to it under clause 6.1.6, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement;
- 5.5 replace, as soon as reasonably practicable, and at the sole cost of the Customer, any Deliverables which are lost, destroyed or stolen and which are integral to the provision of the Services.
- ## 6. Customer's obligations
- 6.1 During the Term, the Customer shall:
- 6.1.1 co-operate with the Supplier in all matters relating to the Services;



- 6.1.2 appoint a Customer Representative. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
- 6.1.3 comply with all Applicable Laws and any company policies communicated to it by the Supplier from time to time;
- 6.1.4 provide for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in the Heads of Terms;
- 6.1.5 provide to the Supplier in a timely manner all documents, information (including any maps, blueprints, lists, itineraries, codes, contact details, emergency telephone numbers and passwords), items (including keys, fobs, security passes, electronic passes, padlocks and other security devices) and materials in any form (whether owned by the Customer or third party) required under the Heads of Terms or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- 6.1.6 inform the Supplier of all health and safety and security requirements that apply at the Customer's premises, including all premises at which the Services are being provided. If the Customer wishes to make a change to those requirements which will materially affect provision of the Services, it can only do so via the change control procedure set out in clause 9 ("Change control");
- 6.1.7 ensure that, where applicable, all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements;
- 6.1.8 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to
  - (a) *the Supplier's access and use of the premises at which the Services are being provided, as well as the use of all necessary facilities and systems (including security systems);*
  - (b) *the installation of the Supplier's Equipment;*
  - (c) *the use of all Customer Materials; and*
  - (d) *the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and*
- 6.1.9 keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions from time to time and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

6.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed, to the extent possible, an extension of time to perform its obligations equal to the delay caused by the Customer, its agents, subcontractors, consultants or employees.

## 7. INSURANCE

7.1 During the Term, and for a period of one year thereafter:

- 7.1.1 the Supplier shall maintain, with a valid and reputable insurer, the following insurance policies:
  - (a) *Employers' Liability with cover for one-off claims up to £10,000,000;*
  - (b) *Public and product liability with cover for one-off claims up to £10,000,000;*
  - (c) *Professional indemnity with cover for one-off claims up to £250,000;*
  - (d) *Products inefficacy with cover for one-off claims up to £5,000,000;*
  - (e) *Wrongful arrest with cover for one-off claims not exceeding £5,000,000; and*



(f) *Loss of keys with cover for one-off claims up to £10,000,000;*

7.1.2 the Customer shall maintain, with a valid and reputable insurer, all such insurance policies which are typically held by businesses of its size and nature, including but not limited to the following insurance policies with the following levels of cover:

(a) *Employers' Liability with cover for one-off claims up to at least £10,000,000;*

(b) *Public and product liability with cover for one-off claims up to at least £10,000,000; and*

(c) *Professional indemnity with cover for one-off claims up to at least £250,000; and*

*such other insurance policies that relate to any premises at which the Services are provided, and the contents of those premises.*

7.2 The Customer shall provide copies of its valid and enforceable insurance policies, certificates and any related documentation to the Supplier as soon as reasonably practicable following a request, and in any event within 5 Business Days, and a failure to comply with this obligation shall constitute a material breach of this Agreement which shall entitle the Supplier to pause, cancel or delay the provision of its Services under this Agreement.

7.3 For the avoidance of doubt, the Supplier shall not insure any premises at which the Services are provided.

## 8. Non-solicitation

The Customer shall not at any time from the date of this Agreement to the expiry of 18 months after the termination or expiry of this Agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

## 9. Change ORDER

9.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

9.1.1 the Services;

9.1.2 the Supplier's existing charges;

9.1.3 any timetable of the Services; and

9.1.4 any of the terms of this Agreement.

9.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

9.3 If the Customer wishes to make a change to the Services:

9.3.1 it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes;

9.3.2 it shall pay to the Supplier an administration fee of £150 (one hundred and fifty pounds) when it submits the notice in clause 9.3.1, being the Supplier's reasonable administrative costs; and

9.3.3 the Supplier shall, as soon as reasonably practicable after receiving the information at clause 9.3.1, provide a draft Change Order to the Customer.

9.4 If the parties:

9.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or

9.4.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 28 (Multi-tiered dispute resolution procedure).

9.5 The Supplier may, in addition to the fixed charge at clause 9.3.2, charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 9.2 on a time and materials basis at the Supplier's daily rates specified in the Heads of Terms.



- 10. Charges and payment**
- 10.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges set out at in the Heads of Terms.
- 10.2 The Charges exclude:
- 10.2.1 the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time;
- 10.2.2 any replacement Supplier Equipment following the loss, theft or destruction of the original, or any replacement or substituted Supplier Equipment.
- 10.3 The supply of the Services is very sensitive to increases in the National Living Wage, and the Supplier may, therefore, entirely at its sole discretion, increase the Charges:
- 10.3.1 on a six-monthly basis with effect from the date that is six months from the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 6-month period, and the first such increase shall take effect on the date that is six months from the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index; and
- 10.3.2 immediately following any increase of the National Living Wage, in line with the percentage increase in the National Living Wage and shall be based on the National Living Wage published by the UK government.
- 10.4 In addition to any increase in the Charges under clause 10.3, the Supplier may by giving at least 1 months' written notice to the Customer vary the Charges to reflect changes to costs within the standard course of commercial business.
- 10.5 The Supplier shall invoice the Customer for the Charges at the intervals specified in the Heads of Terms. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed, together with any of the Supplier's Equipment used in the provision of the Services, during that month.
- 10.6 In the event that the Supplier replaces any Supplier Equipment in accordance with its obligation under clause 5.5, then it may, at its sole discretion, submit a separate invoice to the Customer for the replacement Deliverable(s) or include the cost of the replacement Deliverable(s) within the invoice submitted in accordance with clause 10.5.
- 10.7 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 10.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:
- 10.8.1 the Customer 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 10.8.1 will accrue each day at 6% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is 0% or less; and
- 10.8.2 the Supplier may suspend all or part of the provision of the Services until payment has been made in full and to enter the Customer's premises to collect any Supplier's Equipment.
- 10.9 All sums payable to the Supplier under this Agreement:
- 10.9.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 10.9.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11. Intellectual property rights**
- 11.1 In relation to any Deliverables:



- 11.1.1 the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
  - 11.1.2 the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
  - 11.1.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 11.1.2.
- 11.2 In relation to the Customer Materials, the Customer:
- 11.2.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - 11.2.2 grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term for the purpose of providing the Services to the Customer.
- 11.3 The Supplier:
- 11.3.1 warrants that the receipt, use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
  - 11.3.2 shall, subject to clause 14 (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and
  - 11.3.3 shall not be in breach of the warranty at clause 11.3.1, and the Customer shall have no claim under the indemnity at clause 11.3.2, to the extent the infringement arises from:
    - (a) *the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;*
    - (b) *any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and*
    - (c) *compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.*
- 11.4 The Customer:
- 11.4.1 warrants that the receipt and use of the Customer Materials in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - 11.4.2 shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.



- 12.** Data protection
- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Agreement.
- 12.4 [Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- 12.4.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 12.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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);
- 12.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 12.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) *the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;*
- (b) *the data subject has enforceable rights and effective legal remedies;*
- (c) *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*
- (d) *the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;*
- 12.4.5 assist the Customer, at the Customer'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;
- 12.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 12.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and



- 12.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 12.5 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 12 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 12.
- 12.6 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 13. Confidentiality**
- 13.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 14. Limitation of liability**
- 14.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, as detailed in clause 7 (Insurance) and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 14.2 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- 14.2.1 death or personal injury caused by negligence;
- 14.2.2 fraud or fraudulent misrepresentation; and
- 14.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.3 Subject to clause 14.2, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.
- 14.4 In clause 14.3:
- 14.4.1 **cap.** The cap shall be fifty per cent (50%) of the total charges in the contract year in which the breaches occurred;
- 14.4.2 **contract year.** A contract year means a 12-month period commencing with the date of this Agreement or any anniversary of it;
- 14.4.3 **total charges.** The total charges means all sums paid by the Customer in respect of goods and services actually supplied by the Supplier; and



- 14.4.4 **total liability.** The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement.
- 14.5 This clause 14.5 sets out specific heads of excluded loss and exceptions from them:
- 14.5.1 Subject to clause 14.2, the types of loss listed in clause 14.5.3 are wholly excluded by the parties.
- 14.5.2 If any loss falls into one or more of the categories in clause 14.5.3 and also falls into a category, or is specified, in clause 14.6, then it is not excluded.
- 14.5.3 The following types of loss are wholly excluded:
- (a) *Loss of profits;*
  - (b) *Loss of sales or business;*
  - (c) *Loss of agreements or contracts;*
  - (d) *Loss of anticipated savings;*
  - (e) *Loss of use or corruption of software, data or information;*
  - (f) *Loss of or damage to goodwill; and*
  - (g) *Indirect or consequential loss.*
- 14.6 The Supplier shall not be liable to the Customer for any losses it suffers which arise from or are connected with any negligent or fraudulent act or omission of any of the Supplier's employees from time to time.
- 14.7 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 14.8 Unless the Customer notifies the Supplier in writing that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall within a reasonable period from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail
- 15. Termination**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 15.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 15.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- 15.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;



- 15.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 15.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
  - 15.1.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 15.1.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - 15.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.3 to clause 15.1.9 (inclusive); or
  - 15.1.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 15.2.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 3 days after being notified in writing to make such payment; or
  - 15.2.2 there is a change of control of the Customer.
- 15.3 The Supplier may, at its sole discretion, charge for the time it spends on the termination or expiration of this Agreement on a time and materials basis at the Supplier's daily rates specified in the Heads of Terms.
- 16. Consequences of termination**
- 16.1 On termination or expiry of this Agreement:
- 16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
  - 16.1.2 the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may, at the Customer's cost, enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
  - 16.1.3 the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services; and
  - 16.1.4 the following clauses shall continue in force: clause 0 (Interpretation), clause 7 (Non-solicitation), clause 11 (Intellectual property rights), clause 13 (Confidentiality), clause 14 (Limitation of liability), clause 16 (Consequences of termination), clause 20 (Waiver), clause 22 (Severance), clause 24 (Conflict), clause 28 (Multi-tiered dispute resolution procedure), clause 29 (Governing law) and clause 29.2 (Jurisdiction).



- 16.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 17. Force majeure**
- 17.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- 17.1.1 acts of God, flood, drought, earthquake or other natural disaster;
  - 17.1.2 epidemic or pandemic;
  - 17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 17.1.4 nuclear, chemical or biological contamination or sonic boom;
  - 17.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 17.1.6 collapse of buildings, fire, explosion or accident;
  - 17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
  - 17.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - 17.1.9 interruption or failure of utility services.
- 17.2 Provided it has complied with clause 17.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 17.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 17.4 The Affected Party shall:
- 17.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - 17.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 2 weeks' written notice to the Affected Party.
- 18. Assignment and other dealings**
- 18.1 This Agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 18.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.



**19. Variation**

Subject to clause 9 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**20. Waiver**

20.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

**21. Rights and remedies**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. Severance**

22.1 If any provision or part-provision of this Agreement 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 this Agreement.

22.2 If any provision or part-provision of this Agreement is deemed deleted under clause 22.1 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.

**23. Entire agreement**

23.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**24. Conflict**

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedule, the provisions of this Agreement shall prevail.

**25. No partnership or agency**

25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**26. Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**27. Notices**

27.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

27.1.1 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



- 27.1.2 sent by email.
- 27.2 Any notice or communication shall be deemed to have been received:
- 27.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 27.2.2 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 at the time recorded by the delivery service; and
- 27.2.3 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. In this clause 27.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 27.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 27.4 A notice given under this Agreement is not valid if sent by fax.
- 28. Multi-tiered dispute resolution procedure**
- 28.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- 28.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“Dispute Notice”), together with relevant supporting documents. On service of the Dispute Notice, the parties’ respective Managing Directors shall attempt in good faith to resolve the Dispute; and
- 28.1.2 if the Managing Directors are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (“ADR notice”) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 15 days after the date of the ADR notice.
- 28.2 No party may commence any court proceedings under clause 29.2 (Jurisdiction) (in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 28.3 If the Dispute is not resolved within 20 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 20 days, or the mediation terminates before the expiration of the said period of 20 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 29.2 (Jurisdiction).
- 29. Governing law AND Jurisdiction**
- 29.1 This Agreement 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.
- 29.2 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 this Agreement or its subject matter or formation.



## SCHEDULE 1 TUPE on entry

### 1. TUPE on entry

#### 1.1 In this Schedule 1 the following definitions apply:

“Effective Date” the date of this Agreement.

“Employees” those employees whose contract of employment transfer to the Supplier from the Customer as at the Effective Date, being those employees who are listed in the Heads of Terms.

“Employee Liability Information” in respect of each of the Employees:

- (a) the identity and age of the Employee;
- (b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any

other applicable code or statutory procedure applied, within the previous two years;

- (d) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer; and
- (e) information about any collective agreement which will have effect after the Effective Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

"Employment Regulations" the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

1.2 The Customer and the Supplier believe that, pursuant to the Employment Regulations, at the Effective Date, the Supplier will become the employer of the Employees.

1.3 The Customer represents, warrants and undertakes to the Supplier that:

- 1.3.1 no persons are employed or engaged in the provision of the Services other than the Employees;
- 1.3.2 none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Agreement;
- 1.3.3 full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees) are set out in this Schedule 5;
- 1.3.4 there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
- 1.3.5 in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has:
  - (a) *complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;*
  - (b) *maintained adequate and suitable records regarding the service of each of its employees;*
  - (c) *calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;*
  - (d) *complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and*
  - (e) *complied with all relevant orders and awards made under any statute affecting their conditions of service;*
- 1.3.6 the Customer has not been involved in any industrial or trade disputes in the last three years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any

industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of the Supplier is likely to lead to any industrial dispute;

- 1.3.7 there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
- 1.3.8 the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- 1.3.9 the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- 1.3.10 [there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
- 1.3.11 no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
- 1.3.12 no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
- 1.3.13 the Customer has provided the Employee Liability Information to the Supplier regarding each of the Employees either in writing or by making it available to the Supplier in a readily accessible form;
- 1.3.14 the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Supplier;
- 1.3.15 the Customer has notified the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided; and
- 1.3.16 the Employee Liability Information was provided not less than 28 days before the Effective Date.
- 1.3.17 the Customer has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of TULRCA, if required.

1.4 The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- 1.4.1 the termination by the Customer of the employment of any of the Employees;
- 1.4.2 anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Supplier by virtue of the Employment Regulations; and
- 1.4.3 any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against the Supplier by virtue of the Employment Regulations (Claims); provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier.

1.5 The Supplier shall procure that its employees, agents and successors in title shall promptly:

- 1.5.1 take such action in connection with the Claims as the Customer shall from time to time reasonably request;



- 1.5.2 provide free of charge all such assistance and information as the Customer may reasonably request relating to the Claims to enable the Claims to be pursued;
  - 1.5.3 subject to any restriction imposed by law, provide the Customer, its legal and other advisers with access to all documents, records or other information held by the Supplier relating to the Claims;
  - 1.5.4 provide the Customer and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Customer with the preparation of its cases in relation to the Claims;
  - 1.5.5 permit and require such employees as the Customer and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Customer and/or its legal or other professional advisers may reasonably require;
  - 1.5.6 provide such other assistance as the Customer may reasonably request in order to ensure the due and timely prosecution of the Claims;
  - 1.5.7 resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Customer and obtaining its agreement to any approval of the request; and
  - 1.5.8 preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Customer's consent to such waiver, such consent not to be unreasonably withheld.
- 1.6 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Effective Date and by the Supplier with effect from the Effective Date.
- 1.7 The Supplier shall indemnify the Customer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 1.7.1 any failure by the Supplier to comply with its obligations pursuant to the Employment Regulations; and
  - 1.7.2 anything done or omitted to be done by the Supplier in respect of any of the Employees whether before or after the Effective Date.