

## ANYIT LIMITED – Terms and Conditions

### 1. Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.

#### 1.1 Definitions:

**Commercially Reasonable Efforts:** the same degree of priority and diligence with which the Supplier meets the support needs of its other similar customers.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors (**Representatives**) to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Contract:** the Customer's purchase or Suppliers quote accepted by the customer order and the Supplier's acceptance of it under condition 3.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer Cause:** any of the following causes:

(a) any improper use, misuse or unauthorised alteration of the Services by the Customer;

(b) any use of the Services by the Customer in a manner inconsistent with the Service Specification or instructions (written or verbal) given by the Supplier;

(c) the use by the Customer of any hardware or software not approved by the Supplier for use by the Customer in connection with the Services; or

(d) the use of a non-current version or release of the any software.

**Customer's Project Manager:** the Customer's manager for the Project appointed in accordance with condition 5.1(a).

**Deliverables:** all products and materials developed by the Supplier in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).

**Fault:** any failure of the Services to reasonable operate in all material respects in accordance with the Contract.

**Help Desk Support:** any support provided by help desk technicians sufficiently qualified and experienced to identify and resolve most support issues.

**Higher-level Support:** any higher-level support provided by an individual on behalf of the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Out-of-scope Services:** any of the following services:

(a) any services provided by the Supplier in connection with any apparent problem regarding the Services reasonably determined by the Supplier not to have been caused by a Fault, but rather by a Customer Cause or a cause outside the Supplier's control (including any investigational work resulting in such a determination); or

(b) any Higher-level Support provided in the circumstances specified in paragraph 4.2.

**Pre-existing Materials:** materials which existed before the commencement of the Project.

**Project:** the project as described in the Project Plan.

**Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

**Project Plan:** a long standing support agreement in connection with the provision of Services by the Supplier in accordance with the Contract or the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by the Supplier in accordance with the Contract.

**Service Hours:** 08:00 to 17:00 Monday to Friday, excluding weekends and public holidays in England.

**Service Levels:** the service level responses and response times referred to in the Service Level Table.

**Services:** the services to be provided by the Supplier under the Contract.

**Service Level Table:** the table set out in paragraph 9.

**Support Request:** a request made by the Customer for support in relation to the Services.

**Supplier:** ANYIT LIMITED (company number: 06495422).

**Supplier's Project Manager:** the Supplier's manager for the Project, appointed in accordance with condition 4.6.

**Third Parties:** other suppliers, service providers, vendors and other third parties contracted with the Customer.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, 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 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** excludes fax and email.
- 1.9 References to conditions and Schedules are to the conditions and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 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. Application of conditions**

- 2.1 These conditions shall:
  - (a) apply to and be incorporated in the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

## **3. Effect of purchase order**

- 3.1 The Customer's purchase order or acceptance of the Supplier's quote constitutes an offer by the Customer to purchase the Services specified in it on these conditions. Accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work

pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

#### **4. Supplier's obligations**

- 4.1 Subject to paragraph 4, the Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance with all material respects with the Project Plan, including;
- (a) providing Help Desk Support on either 01449 798088 or helpdesk@anyit.com;
  - (b) use Commercially Reasonable Efforts to correct all Faults reported under paragraph 8; and
  - (c) provide technical support for any software provided by the Supplier as part of the Services in accordance with the Service Levels.
- 4.2 Any Higher-level Support requested by the Customer and provided by an individual whose qualification or experience is greater than that reasonably necessary to resolve the relevant Support Request shall be deemed an Out-of-scope Service, provided that an appropriately qualified or experienced individual was available at the time when the Higher-level Support was sought.
- 4.3 The Supplier may reasonably determine that any services are Out-of-scope Services. If the Supplier makes any such determination, it shall promptly notify the Customer of that determination.
- 4.4 The Customer acknowledges that the Supplier is not required to provide Out-of-scope Services.
- 4.5 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.6 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier may nominate different person(s) to act as the Supplier's Project Manager where reasonably necessary in the interests of the Supplier's business.

#### **5. Customer's obligations**

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;

- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
  - (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
  - (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
- 5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.
- 5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of the Supplier. The Customer shall not be in breach of this condition 5.3 if it hires an employee or subcontractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or subcontractors of the Supplier.
- 5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier on demand a sum equivalent to 40% of the then current annual remuneration of the Supplier's employee or subcontractor or, if higher, 40% of the annual remuneration to be paid by the Customer to such employee or subcontractor.

## **6. Change control**

- 6.1 The Customer's Project Manager and the Supplier's Project Manager shall meet at least once every 12 months to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
  - (b) any variations to the Supplier's charges arising from the change;
  - (c) the likely effect of the change on the Project Plan; and

- (d) any other impact of the change on the terms of the Contract.
- 6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

## **7. Charges and payment**

- 7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. condition 7.3 and condition 7.5 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.
- 7.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly fee rates as amended from time to time;
  - (b) the Supplier shall be entitled to charge at an overtime rate of 100% of the normal rate for part days and for time worked by members of the project team outside the Service Hours on a pro-rata basis, unless agreed otherwise with the prior written consent of the Supplier;
  - (c) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(d); and
  - (d) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7. Any expenses, materials and third party services shall be invoiced by the Supplier. Each invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 7.3 Services provided on a time-and-materials basis shall include but not limited to where:
- (a) No fault is found;
  - (b) Out-of-the Scope Services are required; or
  - (c) the cause of the incident that gave rise to the Support Request is one or more of the following:
    - (i) that power has been switched off or disconnected from a socket, device or external power supply unit;

- (ii) that a network cable is disconnected at device, data point, switch or hub including at the communications cabinet;
- (iii) that that the fault relates to a telephone line and/or broadband circuit unless the telephone line and/or broadband service has been supplied and is currently supported by the Supplier under a managed services agreement;
- (iv) that the fault relates to a Wi-Fi router unless that Wi-Fi router has been supplied and is currently supported by the Supplier under a managed services agreement; or
- (v) the Supplier reasonably believes that the fault has been caused (wholly or in part) by damage or interference with equipment or software by the Customer or a third party.

7.4 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to the Supplier in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.5.

7.5 Any fixed price contained in the Project Plan excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier [at cost]; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.6 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt or within the due date on the invoice, whichever is sooner.

7.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment; and
- (b) suspend all Services until payment has been made in full.

7.8 Time for payment shall be of the essence of the Contract.

- 7.9 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.10 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 7.11 The Supplier will automatically increase Customer's allocated services and automatically amend the monthly bill to the Client (without consent required) in order to maintain services.

7.12

## **8. Submitting and Support Requests**

- 8.1 Each Support Request shall include a description of the problem and the start time of the incident.
- 8.2 The Customer shall provide the Supplier with:
- (a) prompt notice of any Faults; and
  - (b) such output and other data, documents, information, assistance and (subject to compliance with all Customer's security and encryption requirements notified to the Supplier in writing) remote access to the Customer's informational technology systems and infrastructure, as are reasonably necessary to assist the Supplier to reproduce operating conditions similar to those present when the Customer detected the relevant Fault and to respond to the relevant Support Request.
- 8.3 The Customer acknowledges that, to properly assess and resolve Support Requests, it may be necessary to permit the Supplier direct access at the Customer's premises to the Customer's information technology systems and infrastructure and the Customer's files, equipment and personnel.
- 8.4 The Customer shall provide such access promptly, provided that the Supplier complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working on the Customer's notified to the Supplier.

## **9. Service Levels**

- 9.1 The Supplier shall:

(a) prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported; and

(b) endeavour to resolve all Support Requests in accordance with the responses and resolution times specified in the table set out below which are 'best efforts' and no penalties shall be payable if these times are not met by the Supplier:

Affected Service	Priority	Response Time	Waiting Times
Service not available (all users and functions unavailable)	1	1 hour	12 hours
Significant degradation of service (large number of users or business critical functions affected,	2	2 hour	18 hours
Limited degradation of service (limited number of users or functions affected, business process can continue)	3	4 hour	32 hours
Service Requests (e.g. new equipment request /new starter or leaver)	4	8 hour	120 hours

9.2 The Supplier and the Customer may agree to vary the Response Times and Resolution Times from 9.1(b).

9.3 The Supplier shall give the Customer regular updates of the nature and status of its efforts to correct any fault.

9.4 The Customer acknowledges that the achievement of the Service Levels by the Supplier may require the co-ordinated, collaborative effort of Third Parties.

9.5 The response times shown at 9.1(b) shall not apply to the following:

- (a) additions, moves or changes to users, devices, configurations or network;
- (b) issues reported otherwise than in accordance with paragraph 8;

- (c) issues reported outside of Service Hours;
- (d) issues caused by equipment or software not meeting the supplier's minimum standards in accordance with paragraph 9.6;
- (e) requests relating to software that is not approved software in accordance with the Supplier's list, which the Customer can request from the Supplier;
- (f) issues that have been caused by the Customer not acting on advice or recommendations given by the Supplier;
- (g) issues caused by the Customer or third parties modifying any equipment or software configuration;
- (h) issues related to user-initiated virus and malware infections;
- (i) issues involving the sourcing of equipment or software;
- (j) issues involving equipment or software that are not under current warranty or maintenance coverage; and
- (k) issues caused by a third party.

## **10. Data Back-Up Services**

10.1 Where data back-up services are included, the following shall apply:

- (a) The Supplier will provide the Customer with the ability to upload its data from its computer systems and store it on third-party servers for the purpose of offsite backup, and to restore this data if required.
- (b) The Supplier will allocate to the Customer the designated storage quota for the storage of its data.
- (c) The Supplier will encrypt the Customer's data during transit and storage.
- (d) The Supplier will store the Customer's data in data centres providing a high level of environmental protection and physical security.
- (e) The Supplier will automatically upgrade the Customer's allocated storage quota to ensure that its backups will continue uninterrupted should the storage limit be reached and automatically amend the monthly bill to the Client (without consent required) in order to maintain the backup services.
- (f) The Customer agrees not to permit any third party to use the data backup service.

(g) The Customer must not store or transmit any unlawful, threatening, defamatory, offensive or pornographic material that constitutes a criminal offence or other unlawful act under any laws.

(h) The Customer agrees to securely store its service and access details and will not knowingly allow its service and access details, specifically any security codes or passwords, to be viewed or retrieved by any third parties.

(i) The Customer must promptly report any actual or suspected security breaches to [helpdesk@anyit.com](mailto:helpdesk@anyit.com)

(j) The Customer agrees that it is solely responsible for paying in full any costs due to any third party that result from the use of the backup service.

10.2 Whilst the Supplier will use Commercially Reasonable Efforts to ensure the security and protection and integrity of the Customer's data, no warranties are given that:

(a) the backup service will be available at all times without interruption;

(b) data centres will be free from unauthorised physical or remote access;

(c) data stored will be entirely safe from loss or corruption; and

(d) a full restoration of data is always possible irrespective of the integrity of the backup.

10.3 The Customer's attention is also drawn to the limitations on the Supplier's liability in paragraph 13.

## **11. Intellectual Property Rights**

11.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 14.1, this licence will automatically terminate.

11.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

## **12. Confidentiality and Supplier's property and compliance with policies**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Each party shall hold the other's Confidential Information in strict confidence, not use the other's Confidential Information for any purpose other than the implementation of this agreement and, subject to condition 12.4 and condition 12.4, not make the other's Confidential Information available to any third party.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this agreement.
- 12.4 A party may disclose the Confidential Information of the other party to such of the disclosing party's Representatives as need to know it for the purpose of discharging the disclosing party's obligations under this agreement, provided that such Representatives are subject to obligations of confidentiality corresponding to those which bind the disclosing party.
- 12.5 A party may disclose Confidential Information of the other party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. To the extent it is legally permitted to do so, the disclosing party shall give the other party as much notice of such disclosure as possible. Where notice of disclosure is not prohibited and is given in accordance with this condition 12.4, the disclosing party shall take into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.6 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

12.7 The above provision of this condition 12 shall survive termination of the Contract, however arising.

### **13. Limitation of liability**

13.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract however arising;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.

13.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.4 Subject to condition 13.2 and condition 13.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss or corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or

negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to an amount up to but not exceeding the previous three months' of payments (prior to the date of the relevant claim) by the Customer to the Supplier in respect of the specific Service detailed in the relevant claim.

## **14. Termination**

14.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) 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;
- (d) 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;
- (e) 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 its creditors 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;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) 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 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;
- (h) 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 an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

- (i) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (k) 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;
  - (l) 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 condition 14.1(d) to condition 14.1(k) (inclusive);
  - (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
  - (n) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.2 Subject to 14.1, either party may terminate the Contract by providing at least three calendar months written notice to the other party and serve this notice in accordance with condition 23.
- 14.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 14.4 Termination of this agreement 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 agreement which existed at or before the date of termination.

## **15. Force majeure**

- 15.1 The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation:
- (a) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party);
  - (b) failure of a utility service or transport network;
  - (c) act of God, war, riot or civil commotion;

- (d) malicious damage;
- (e) compliance with any law or governmental order, rule, regulation or direction;  
and
- (f) accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## **16. Waiver**

- 16.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **17. Rights and remedies**

- 17.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. Severance**

- 18.1 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.
- 18.2 If any provision or part-provision of this agreement is deemed deleted under condition 18.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

## **19. Entire agreement**

- 19.1 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.
- 19.2 Each party acknowledges that, in entering into this agreement, it does not rely on, and 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.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **20. Assignment**

- 20.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 The Supplier may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

## **21. No partnership or agency**

- 21.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **22. Third party rights**

- 22.1 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.

## **23. Notices**

- 23.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.
- 23.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address; and
  - (b) 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.
- 23.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **24. Governing law**

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

## **25. Jurisdiction**

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