

St Elizabeth Hospice Terms and Conditions for the Purchase of Goods and/or Services

1. DEFINITIONS

1.1 In these Conditions the following definitions and rules of interpretation shall apply.

Business Day	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
Commencement Date	means the coming into force of the Contract in accordance with either clause 2.1.2 or clause 2.3;
Conditions	means these terms and conditions as amended from time to time in accordance with clause 3;
Contract	means the contract between the Customer and the Contractor for the supply of Goods and/or Services in accordance with these Conditions;
Contractor	means the supplier of the Goods and/or Services under the Contract;
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be interpreted accordingly;
Customer	means ST ELIZABETH HOSPICE , registered with company number 01794927 and charity number 289154 whose registered address is at 565 Foxhall Road, Ipswich, Suffolk IP3 8LX;
Customer Materials	has the meaning set out in clause 6.3.10;
Data Protection Legislation	means: <ul style="list-style-type: none">• if and to the extent that the UK GDPR (as defined in the Data Protection Act 2018) applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; or• if and to the extent that the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) applies, the law of the European Union or any member state of the European

Union to each party is subject, which relates to the protection of personal data;

Days	means calendar days, being any day including Saturdays and Sundays and public holidays in England;
Deliverables	all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
Delivery Date	means (unless otherwise agreed in writing between the parties) the date on which the Goods and/or Services are to be delivered and/or supplied to the Customer, as specified in the Purchase Order;
Delivery Location	has the meaning given to it in clause 5.2.2;
Goods	means the goods, or any part of them, as set out in the Purchase Order;
Intellectual Property Rights	means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, 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 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	means the Customer business policies and codes as notified by the Customer to the Contractor from time to time;
Price	means the price of the Goods and/or Services as

specified in the Purchase Order;

Purchase Order means the document relating to the Contract for Goods and/or Services to be supplied by the Customer to the Contractor in accordance with the terms of the Contract;

Services means the services, including any Deliverables, to be provided by the Contractor under the Contract as set out in the Purchase Order;

Specification means the specification for the Goods and/or Services contained or referred to in the Purchase Order.

1.2 In these Conditions (unless the context otherwise requires) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

1.3 A reference to a particular law is a reference to it, as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 The headings in these Conditions are intended for reference only and do not affect their construction.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to writing or written excludes fax but not email.

2. FORMATION OF CONTRACT

2.1 Save for where clause 2.3 applies:

2.1.1 the Purchase Order constitutes an offer by the Customer to purchase Goods and/or Services from the Contractor in accordance with these Conditions; and

2.1.2 the Purchase Order shall be deemed to be accepted on the earlier of:

2.1.2.1 the Contractor issuing written acceptance of the Purchase Order, or

2.1.2.2 the Contractor doing any act consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence.

- 2.2 For the purposes of clause 2.1, the Contractor agrees that it shall either acknowledge receipt of, or reject, the Purchase Order in not less than two Business Days of receipt.
- 2.3 If the Contractor issued the Customer with a quotation or response to tender in respect of the supply of Goods and/or Services, such quotation or response to tender shall constitute an offer to supply the Goods and/or Services in accordance with these Conditions which shall be accepted on the issuance, by the Customer, of the Purchase Order, at which point and on which date the Contract shall come into existence.
- 2.4 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions that the Contractor seeks to impose or incorporate (including as may be referred to in any quotation or response to tender), or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Every term of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.6 The Contractor waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document of the Contractor that is inconsistent with these Conditions.
- 2.7 Any forecast of the Customer's likely requirements, dates or frequency of delivery of Goods and/or Services shall not be binding on the parties.
- 2.8 Should there be any inconsistency between:
- 2.8.1 the Purchase Order;
 - 2.8.2 the Specification; and
 - 2.8.3 these Conditions,
- the order of priority shall be as set out in clause 2.8.1 to clause 2.8.3, above.

3. VARIATION

- 3.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 3.2 The Customer reserves the right, on reasonable notice to the Contractor, to vary the Goods and/or Services detailed in the Purchase Order and any alteration to the Price or Delivery Date arising by reason of such modification shall be agreed in writing

between the parties. Any Purchase Order amended pursuant to this clause 3.2 shall be considered the Purchase Order for the purposes of the Contract and shall supersede and replace any previous Purchase Order.

4. SUPPLY OF GOODS

4.1 The Contractor shall supply the Goods to the Customer in accordance with the terms of the Contract.

4.2 The Contractor shall ensure that the Goods shall:

4.2.1 be free from defects in materials and workmanship and remain so for 12 months after delivery (or such other period as the parties may agree in writing);

4.2.2 be of satisfactory quality (within the meaning of the Sales of Goods Act 1979) and fit for any purpose held out by the Contractor or made known to the Contractor by the Customer, expressly or by implication, and in this respect the Customer relies on the Contractor's skill and judgment;

4.2.3 conform to the specifications, drawings, descriptions given in any material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor;

4.2.4 conform in all respects with any Specification, including any variations thereof; and

4.2.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

4.3 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4.4 The Customer may inspect and test the Goods at any time before delivery. The Contractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Contract.

4.5 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Contractor's undertakings at clause 4.2, the Customer shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.

4.6 The Customer may conduct further inspections and tests after the Contractor has

carried out its remedial actions.

5. DELIVERY OF GOODS

5.1 The Contractor shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and free of damage;

5.1.2 each delivery of the Goods is accompanied by a delivery note correctly addressed to the Customer which shows the Purchase Order number, order and dispatch dates, the type and quantity of the Goods, the net and gross weight, details of any hazardous containers and the handling instructions for such materials (to the extent applicable), returns instructions and, in the case of part delivery, the outstanding balance remaining to be delivered; and

5.1.3 if the Contractor requires the Customer to return any packaging material for the Goods to the Contractor, that fact is clearly stated on the delivery note (any such packaging material shall only be returned to the Contractor at the cost of the Contractor).

5.2 The Contractor shall deliver the Goods:

5.2.1 on the Delivery Date, if no such date is specified, then within 7 Days of the date of the Purchase Order;

5.2.2 carriage and insurance paid to the address specified in the Purchase Order or as instructed by the Customer before delivery (**Delivery Location**); and

5.2.3 between 8am and 5pm on a Business Day, or as otherwise instructed by the Customer.

5.3 Delivery of the Goods shall be completed on the completion of the unloading of the Goods at the Delivery Location and the Contractor agrees that it shall be responsible for (at its own risk) off-loading the Goods at the Delivery Location in accordance with the Customer's reasonable instructions.

5.4 The Contractor shall immediately notify the Customer if the Contractor knows or believes that:

5.4.1 any Goods for which the Customer has placed a forecast are, or are likely to be, out of stock or it will not be, or is unlikely to be, able to deliver all or any of the Goods by the date required; or

5.4.2 it will not be, or is unlikely to be, able to deliver all or any of the Goods by Delivery Date,

and if the Contractor provides the Customer with such notice, the Customer shall be entitled to cancel any Purchase Order placed without liability and without prejudice to any other right or remedy it may have.

5.5 Where the Customer agrees in writing to accept delivery by instalments the Contract shall be construed as a single Contract in respect of each instalment. Nevertheless failure by the Contractor to deliver any one instalment shall entitle the Customer to treat the whole Contract as repudiated.

5.6 If the Goods delivered are in excess of the quantities ordered by the Customer, the Customer shall not be bound to pay for the excess and any excess shall be and shall remain at the Contractor's risk and shall be returnable at the Contractor's expense. If the Contractor fails to collect the Goods in accordance with this clause, the Customer may charge the Contractor all reasonable storage, transport and disposal costs of the Goods.

5.7 If the Contractor delivers any Goods prior to the Delivery Date, the Customer has the right (acting in its absolute discretion) to refuse to accept the Goods (and delivery shall not be considered completed for the purposes of clause 5.8). In such circumstances the Contractor shall, at its own cost and risk, remove any Goods tendered for delivery, and redeliver them on the Delivery Date.

5.8 Title and risk in the Goods shall pass to the Customer on completion of delivery.

6. SUPPLY OF SERVICES

6.1 The Contractor shall, from the Commencement Date and for the duration of the Contract, supply the Services to the Customer in accordance with the terms of the Contract.

6.2 The Contractor shall meet any performance dates for the Services specified in the Purchase Order or that the Customer notifies to the Contract and time is of the essence in relation to any of those performance dates.

6.3 In providing the Services, the Contractor shall:

6.3.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;

6.3.2 perform the Services with the best care, skill and diligence in accordance with best industry practice in the Contractor's industry, trade or profession;

6.3.3 use personnel who are suitably skilled and experienced to perform tasks

assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;

- 6.3.4 ensure that the Services shall conform with the Specification and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Contractor;
- 6.3.5 provide all equipment, tools and vehicles and other items in sufficient quantity as are required to provide the Services;
- 6.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- 6.3.7 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licenses and consents in relation to the Services;
- 6.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any location where the Services are to be supplied and the Customer reserves the right to refuse any person access to its premises, which shall only be given to the extent necessary for the performance of the Services;
- 6.3.9 notify the Customer as soon as the Contractor becomes aware of any health and safety hazards or issues which arise in relation to the Services;
- 6.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Contractor (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 6.3.11 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Contractor acknowledges that the Customer may rely or act on the Services; and
- 6.3.12 comply with any additional obligations as set out in the Specification.

7. CUSTOMER REMEDIES

- 7.1 If the Contractor fails to deliver the Goods by Delivery Date or to perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or

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

- 7.1.1 to terminate the Contract with immediate effect by giving written notice to the Contractor;
- 7.1.2 to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Contractor attempts to make;
- 7.1.3 to recover from the Contractor any costs incurred by the Customer in obtaining substitute goods or services from a third party;
- 7.1.4 to require a refund from the Contractor of sums paid in advance for Services that the Contractor has not provided or Goods that it has not delivered; and
- 7.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Contractor's failure to meet such dates.

7.2 If the Contractor has delivered Goods that do not comply with the undertakings set out in clause 4.2, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- 7.2.1 to terminate the Contract with immediate effect by giving written notice to the Contractor;
- 7.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Contractor at the Contractor's own risk and expense;
- 7.2.3 to require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);
- 7.2.4 to refuse to accept any subsequent delivery of the Goods which the Contractor attempts to make;
- 7.2.5 to recover from the Contractor any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- 7.2.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Contractor's failure to supply Goods in accordance with clause 4.2.

7.3 If the Contractor has supplied Services that do not comply with the requirements of clause 6.3 then, without limiting or affecting other rights or remedies available to it,

the Customer shall have one or more of the following rights and remedies:

- 7.3.1 to terminate the Contract with immediate effect by giving written notice to the Contractor;
- 7.3.2 to return the Deliverables to the Contractor at the Contractor's own risk and expense;
- 7.3.3 to require the Contractor to provide repeat performance of the Services, or to provide a full refund of the Price paid for the Services (if paid);
- 7.3.4 to refuse to accept any subsequent performance of the Services which the Contractor attempts to make;
- 7.3.5 to recover from the Contractor any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- 7.3.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Contractor's failure to comply with clause 6.3.4.

7.4 The terms of this clause 7 shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Contractor.

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

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- 8.1.1 provide the Contractor with reasonable access at reasonable times to the Customer's premises, or such other location at which the Services are to be provided, for the purpose of providing the Services; and
- 8.1.2 provide such necessary information for the provision of the Services as the Contractor may reasonably request.

9. CHARGES

9.1 The Price:

- 9.1.1 in respect of Goods, shall be inclusive of the costs of packaging, insurance and carriage of the Goods (including the cost of any applicable export and import licences and any additional duties or taxes as may be payable in connection with the export and import of the Goods); and

9.1.2 in respect of Services:

9.1.2.1 shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Services; and

9.1.2.2 shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services (unless otherwise agreed in writing between the parties).

9.2 In respect of both Goods and Services, no extra charges shall be effective unless agreed in writing and signed by the Customer.

9.3 In respect of the Goods, the Contractor shall invoice the Customer no later than 30 Days following completion of delivery. In respect of Services, the Contractor shall invoice the Customer no later than 30 Days following completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order number.

9.4 In consideration of the supply of Goods and/or Services by the Contractor, the Customer shall pay the invoiced amounts within 30 Days of the date of a correctly rendered invoice to a bank account nominated in writing by the Contractor.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

9.6 The Contractor shall maintain complete and accurate records of the time spent and materials used by the Contractor in providing the Services, and the Contractor shall allow the Contractor to inspect such records at all reasonable times on request.

9.7 Without prejudice to any other right or remedy, the Customer reserves the right to set off any amount owing at any time from the Contractor to the Customer against any amount payable by the Customer to the Contractor under the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Contractor.

- 10.2 The Contractor grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 10.3 The Customer grants the Contractor a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Contractor for the term of the Contract for the purpose of providing the Services to the Customer.
- 10.4 The Contractor acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.
- 10.5 This clause shall survive termination or expiry of the Contract.

11. COMPLIANCE WITH LAWS

- 11.1 In performing its obligations under the Contract, the Contractor shall:
- 11.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force, including the Bribery Act 2010, Modern Slavery Act 2015 and the Equality Act 2010; and
 - 11.1.2 the Mandatory Policies.
- 11.2 The Contractor shall notify the Customer as soon as it becomes aware of any breach or potential breach of this clause 11.
- 11.3 Pursuant to clause 12.1.1.2, the Customer reserves the right to terminate the Contract if the Contractor is in breach of, or suspected to be in breach of, this clause 11.

12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- 12.1.1 with immediate effect by giving written notice to the Contractor if:
 - 12.1.1.1 there is a change of Control of the Contractor; or
 - 12.1.1.2 the Contractor commits a breach of clause 11; or
 - 12.1.2 for convenience by giving the Contractor three months' written notice.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract immediately on written notice to the other if:

- 12.2.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 Days after being notified to do so;
- 12.2.2 the other party repeatedly breaches any term of the Contract 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 terms of the Contract;
- 12.2.3 the other party passes a resolution that it be wound-up or that an application be made for an administration order or applies to enter into a voluntary arrangement with its creditors;
- 12.2.4 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the other party's property, assets or any part thereof;
- 12.2.5 a court orders that the other party be wound-up or a receiver of all or any part of the other party's assets be appointed;
- 12.2.6 the other party is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
- 12.2.7 the other party (being an individual or partnership) is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors; or
- 12.2.8 the other party ceases or threatens to cease to carry on its business.

13. **CONSEQUENCES OF TERMINATION**

13.1 On termination of the Contract:

- 13.1.1 the Contractor shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials (and if the Contractor fails to do so, then the Customer may enter the Contractor's premises and take possession of them);
- 13.1.2 until such Deliverables as referred to in clause 13.1 have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
- 13.1.3 give all reasonable assistance to the Customer and any incoming supplier of any goods and/or Services equivalent to the Goods and/or Services delivered by the Contractor prior to termination.

- 13.2 The termination or expiry of the Contract, however arising, shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. INDEMNITY

14.1 The Contractor will indemnify the Customer against, and covenant to pay an amount equal to:

14.1.1 all losses (including but not limited to all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer does or will incur or suffer; and

14.1.2 all claims or proceedings made or brought or threatened against the Customer by any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses that the Customer does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings,

in each case arising out of or in connection with:

14.1.3 defective workmanship, quality or materials;

14.1.4 breach of clause 11;

14.1.5 any alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods and/or Services;

14.1.6 any liability under the Consumer Protection Act 1987 in respect of the Goods and/or Services;

14.1.7 any claim against the Customer arising out of the Contractor's incorrect description of the Goods and/or Services or any part thereof; or

14.1.8 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Goods and/or Services where applicable, as a consequence of a direct or indirect breach or negligent performance or

failure or delay in performance of the Contract by the Contractor.

14.2 The provisions of this clause 14 shall survive termination of the Contract, however arising.

15. **LIMITATION OF LIABILITY**

15.1 References to liability in this clause 15 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.2 Nothing in this agreement shall limit or exclude any liability for:

15.2.1 death or personal injury caused by negligence;

15.2.2 fraud or fraudulent misrepresentation;

15.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and/or

15.2.4 any other liability which cannot be limited or excluded by applicable law.

15.3 Nothing in this agreement shall limit or exclude the Contractor's liability:

15.3.1 for deliberate default;

15.3.2 arising from contract abandonment;

15.3.3 for loss arising from the indemnity in clause 14; and

15.4 Subject to clause 15.2 and clause 15.3, the Customer's total liability to the Contractor under the Contract shall not exceed 100% of the Price.

15.5 Subject to clause 15.2 and clause 15.3, the Contractor's total liability to the Customer under the Contract shall not exceed £1,000,000.

15.6 Subject to clause 15.2 and clause 15.3, neither party shall be liable for:

15.6.1 loss of profits;

15.6.2 loss of sales or business;

15.6.3 loss of agreements or contracts;

15.6.4 loss of anticipated savings;

15.6.5 loss of or damage to goodwill or reputation;

- 15.6.6 loss of use or corruption of software, data or information; and/or
- 15.6.7 any indirect or consequential loss.

16. CONFIDENTIALITY

- 16.1 The Contractor undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the Customer (**Confidential Information**), except as permitted by clause 16.2.
- 16.2 The Contractor may disclose the Customer's Confidential Information:
 - 16.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Contractor's rights or carrying out its obligations under the Contract, but the Contractor shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Customer's Confidential Information comply with this clause 16; and
 - 16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 The Contractor shall not use the Customer's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 16.4 This clause 16 shall survive termination of the Contract however arising.

17. DATA PROTECTION

- 17.1 The parties agree that they will comply with all applicable requirements of the Data Protection Legislation if and to the extent that the Data Protection Legislation applies to the Contract.
- 17.2 Either party may, at any time on not less than 30 Days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

18. ASSIGNMENT AND SUB-CONTRACTING

- 18.1 The Contractor shall not, without the prior written consent of the Customer, assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner

with any of its rights and obligations under the Contract.

- 18.2 If the Customer consents to the Contractor sub-contracting any of its obligations under the Contract, the Contractor shall remain liable for any act or omission of the sub-contract as if they were its own acts or omissions.

19. ENTIRE AGREEMENT

- 19.1 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 19.2 Each party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) that is not set out in the Contract.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20. NOTICES

- 20.1 Any notice given under this Contract shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, sending it by pre-paid recorded delivery or registered post or by email to the other party at the relevant address as set out on the Purchase Order. Any such notice shall be deemed to have been received:

20.1.1 if delivered personally, at the time of delivery;

20.1.2 in the case of pre-paid recorded delivery or registered post, at 9am on the second Business Days from the date of posting; and

20.1.3 if sent by email at the time of transmission.

- 20.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. GENERAL

- 21.1 No party who is not a party to the Contract shall be entitled to enforce any terms of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 21.2 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 21.2, 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.

21.3 A waiver of any right or remedy is only effective if given in writing. A failure or delay of a party to exercise or enforce any right or remedy under the Contract shall not be deemed to be 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.

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

23. **GOVERNING LAW AND JURISDICTION**

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

23.2 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 the Contract or its subject matter or formation.