

Purchase Order Terms and Conditions for supply of Goods and Services

1. INTERPRETATION

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

1.1 DEFINITIONS:

Conditions: these terms and conditions as amended from time to time in accordance with Clause 17.7.

Confidential Information: all documentation, records, reports, data or drawings provided by one party to the other pursuant to this Contract and information disclosed by one party to the other which is marked as or has been otherwise indicated to be confidential, or which derives value to a party from being confidential or which would be regarded as confidential by a reasonable business person, save to the extent that such information (a) is or was in the possession of the other party without obligation of confidentiality; or (b) was obtained by the other party from a third party without obligation of confidentiality; or (c) enters or is already in the public domain otherwise than by a breach of this Contract or a breach of any obligation of confidentiality owed by a party to a third party; or (d) is or was independently developed by the receiving party without access to the information disclosed to it under this Contract.

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

Controller: has the meaning given to it in UK GDPR.

Customer: South Western Railway Limited (a company registered in England and Wales with registration number 03266760 whose registered address is: 4th Floor, South Bank Central, 30 Stamford Street, London, SE1 9LQ.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time including any statute or statutory provision which amends, supplements, consolidates or replaces the same, and in particular, to the extent applicable and without limitation, the GDPR, the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any guidance or codes of practice issued by the Commissioner (as defined in UK GDPR) or any other applicable regulatory authority in relation to data protection and privacy from time to time.

Deliverables: the deliverables set out in the Order or as otherwise agreed between the Supplier and the Customer.

EIR: the Environmental Information Regulations 2004 (SI 2004/3391).

FOIA: Freedom of Information Act 2000.

GDPR: General Data Protection Regulation (Regulation (EU) 2016/679).

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, copyright, trademarks and service marks, business names and domain names, goodwill, rights in designs, 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 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 policies and codes of conduct available to the Supplier on request.

Network Rail: in respect of (a) the network or any relevant facility Network Rail Infrastructure Limited (a company registered in England and Wales with registered number 02904587 whose registered office is at Waterloo General Office, London, SE1 8SW or any successor in title to the network or any relevant railway facility; or (b) any new or other sections of network or any relevant new or other railway facilities the owner (if different).

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

Personal Data: has the meaning given to it in UK GDPR.

Request for Information: a request for information or an apparent request under the FOIA or the EIR.

Services: the services, including the Deliverables, to be supplied by the Supplier to the Customer as set out in the Service Specification.

Secretary of State: the Secretary of State for Transport in the United Kingdom.

Service Specification: the description or specification for the Services agreed in writing between the Customer and Supplier.

Supplier: means the legal entity specified in the Order who shall provide the Goods and/or Services to the Customer.

UK GDPR: the GDPR as it forms part of the domestic law of the United Kingdom

by virtue of the European Union (Withdrawal) Act 2018.

Working Day: a day (other than a Saturday, Sunday or public holiday) on which the banks are open for domestic business in the City of London.

2. BASIS OF CONTRACT

2.1 Where the Customer and the Supplier have entered into a written framework agreement for the purchase of the Goods and/or Services, (a **Framework Agreement**), then in the event of a conflict between the terms of the Framework Agreement and this Contract the Framework Agreement shall take precedence.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing written acceptance of the Order; or (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 Except as set out in Clause 2.1, these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. SUPPLY AND DELIVERY OF GOODS

3.1 The Supplier shall ensure that the Goods shall: (a) correspond with their description and any applicable Goods Specification; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication; (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery or as set out in the Goods Specification; and (d) comply with all applicable statutory and regulatory requirements relating to the Goods.

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

3.3 The Supplier shall ensure that: (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods and special storage instructions (if any).

3.4 The Supplier shall deliver the Goods: (a) on the date specified in the Order or, if no such date is specified, then as soon as possible and, in any event, by any date made known to the Supplier by the Customer prior to the Commencement Date or otherwise within 14 days of the date of the Order; (b) to the Customer's premises set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and (c) during the Customer's normal hours of business on a Working Day, or as instructed by the Customer.

3.5 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

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

4. SUPPLY OF SERVICES

4.1 The Supplier 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.

4.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates and in providing the Services.

4.3 The Supplier shall: (a) perform the Services with reasonable care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; (b) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier; (c) obtain and at all times maintain all licences and consents which may be required for the provision of the Services; (d) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, including where applicable, the Data Protection Legislation in accordance with clause 12 below; (e) comply with the Mandatory Policies; (f) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; (g) 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 Supplier

acknowledges that the Customer may rely or act on the Services; and **(h)** comply with any additional obligations as set out in the Service Specification.

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

5. REMEDIES

5.1 Without prejudice to any other terms under these Conditions, if the Supplier fails to deliver the Goods and/or perform the Services by the date set out in the Order or as otherwise notified to the Supplier or determined under these Conditions, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights: **(a)** to terminate the Contract with immediate effect by giving written notice to the Supplier; **(b)** to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; **(c)** to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and **(e)** to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

5.2 If the Supplier has supplied Services that do not comply with the requirements of Clause 4.3 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights: **(a)** to terminate the Contract with immediate effect by giving written notice to the Supplier; **(b)** to return the Deliverables to the Supplier at the Supplier's own risk and expense; **(c)** to require the Supplier to provide repeat performance of the Services or to provide a full refund of the price paid for the Services; **(d)** to refuse to accept any subsequent performance of the Services which the Supplier attempts to make; **(e)** to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and **(f)** to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with Clause 4.3.

5.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods: **(a)** to terminate the Contract with immediate effect by giving written notice to the Supplier; **(b)** to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense; **(c)** to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid); **(d)** to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; and **(e)** to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with Clause 3.

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

5.5 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

6. CHARGES AND PAYMENT

6.1 The price for Goods: **(a)** shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery or as otherwise agreed with the Customer; and **(b)** shall not be inclusive of VAT; and **(c)** include all costs and charges of packaging, insurance, transport of the Goods.

6.2 The charges for the Services shall be set out in the Order or as otherwise agreed with the Customer, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services (but does not include VAT). All other costs, charges and expenses of the Supplier directly or indirectly incurred in connection with the performance of the Services shall be borne by the Supplier.

6.3 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

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

6.5 Subject to clause 6.6 and 6.7, if the Customer fails to make a payment due

to the Supplier under the Contract by the due date, then the Supplier may claim interest on undisputed overdue sums from the due date until payment of the overdue sum. Interest under this Clause 6.5 will accrue each day at 2% a year above the Bank of England's base rate from time to time provided that the maximum rate payable by the Customer shall be no more than 8%.

6.6 The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract.

6.7 The Customer shall be entitled to withhold payment of any invoiced amount without liability or interest accruing, if that amount is the subject of a genuine dispute between the parties until such time as the resolution in question is resolved as between the parties.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier. The Supplier grants to 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 the Contract to use such Intellectual Property Rights (excluding materials provided by the Customer) for the purpose of receiving and using the Services in its business.

7.2 All Intellectual Property Rights in the Deliverables shall be owned by the Customer and the Supplier hereby assigns any such rights to the Customer with full title guarantee. The Supplier will, at its own cost, execute such documents that the Customer reasonably requires to perfect its title in the Deliverables.

7.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer which the Customer owns (**Customer Materials**) to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

8. INDEMNITY

8.1 The Supplier shall indemnify the Customer from and against loss, liability, costs (including reasonable legal costs), damages or expenses arising from: **(a)** any breach, negligent performance or non-performance by the Supplier of this Contract including (but not limited to) any negligent or reckless act, omission or default in the provision of the Goods and/or Services by the Supplier and any costs, loss, damages or expenses incurred by the Customer arising out of the Supplier's failure to remedy or replace Goods and/or to repeat performance of the Services in accordance with Clause 5.3 or Clause 5.2 respectively; **(b)** any claim, demand or action made against the Customer alleging that the use of the Goods and/or the Services and/or the Deliverables infringes or will infringe any Intellectual Property Rights of any third party; **(c)** any death or personal injury caused by the Supplier, its officers, employees or any sub-contractors; **(d)** any damage to the Customer's premises or property caused by the Supplier, its officers, employees or any sub-contractors; **(e)** any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with the Supplier's breach of the terms of this Contract, including arising out of or in connection with defective Goods and/or performance, negligent performance or non-performance of the Services; and **(f)** any fraud by the Supplier.

8.2 Subject to Clauses 8.4 and 8.5, the Supplier's aggregate liability in any calendar year under or in connection with this Contract, whether arising from contract, tort (including negligence) or otherwise shall be limited to the higher of 100% of the total price and/or charges as set out in the Order or £1 million.

8.3 Subject to Clauses 8.4 and 8.5 and without prejudice to the Customer's obligations to pay the price and/or the charges pursuant to Clause 6, the Customer's aggregate liability in any calendar year under or in connection with this Contract, whether arising from contract, tort (including negligence) or otherwise shall be limited to 50% of the total price and/or charges as set out in the Order.

8.4 Nothing in this Contract shall limit or exclude either party's liability for **(a)** death or injury to persons; **(b)** fraud or fraudulent misrepresentation; **(c)** breach of Clause 8.1(b); **(d)** 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 **(e)** any other liability which cannot be lawfully excluded or limited.

8.5 The Customer shall not be liable to the Supplier for any **(a)** indirect or consequential loss; or **(b)** loss of profits, loss of contracts or revenue, loss of goodwill or reputation or loss of anticipated savings.

8.6 This Clause 8 shall survive termination of the Contract.

9. INSURANCE

(a) During the term of the Contract and for 6 (six) years after the Contract has terminated for any reason or expired, the Supplier shall maintain in force, with a reputable insurance company, such professional indemnity

insurance, product liability insurance, employer's liability insurance, cyber security insurance and/or public liability insurance to cover the liabilities that may arise under or in connection with the Contract to a minimum amount of cover as previously notified to the Supplier by the Customer, or, in the absence of such notification, such amount as may be reasonable given the nature and scope of the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover (or, where agreed with the Customer, a broker's letter of undertaking) and evidence that the relevant premiums have been paid.

- (b) The Supplier shall comply with all terms and conditions of the insurance policies set out in Clause 9(a) at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, then the Supplier shall notify the Customer without delay.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time during the term, and for a period of 5 (five) years after termination or expiry of this Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 10.2 and notwithstanding the provisions of Clause 10.4.

10.2 Each party may disclose the other party's Confidential Information: (a) to its employees, officers, representatives, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract and each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it disclosed the other party's Confidential Information comply with this Clause 10; and (b) as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority (including, without limitation, any internationally recognized stock exchange), provided that the parties acknowledge that notwithstanding this Clause 10, the Customer may disclose such Confidential Information as is provided by the Supplier as part of the Goods and/or the Services provided under this Contract to the Secretary of State or Network Rail.

10.3 No party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under in connection with the Contract.

10.4 The Supplier shall tell the Customer immediately if it discovers that this Clause 10 has been breached and shall, on request, return to the Customer all of the Customer's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

11. FREEDOM OF INFORMATION

11.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and will assist and co-operate with the Customer to enable it to comply with all information disclosure obligations under the FOIA and/or the EIR.

11.2 The Supplier shall:

- (a) transfer to the Customer any Request for Information received by the Supplier as soon as reasonably practicable and in any event within 2 Working Days of receiving any such Request for Information;
- (b) provide the Customer with a copy of all information in its or their possession or power in the form that the Customer requires within 5 Working Days of the Customer's request (or within such other period as the Customer may specify);
- (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to any Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR (as applicable).

11.3 The Customer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

11.4 The Supplier shall not respond to any Request for Information unless expressly authorized to do so by the Customer.

11.5 The Supplier acknowledges that notwithstanding any provision to the contrary in this Contract, the Customer may be obliged under the FOIA and/or the EIR and any related Code of Practice or other guidance, to disclose information concerning the Supplier (a) in certain circumstances without consulting the Supplier; or (b) following consultation with the Supplier and having taken its views into account, provided always that where applicable the Customer shall in accordance with the provisions of the FOIA and/or the EIR take reasonable steps where appropriate to give the Supplier advanced notice or failing that to draw the disclosure to the Supplier's attention after any such disclosure.

12. DATA PROTECTION AND CYBER

12.1 The parties acknowledge and agree that the Supplier shall not process

any Personal Data under or in connection with the Contract without the prior agreement of the Customer, and nothing in these Conditions shall be construed as to separately imply any authorization on the part of the Customer to process any Personal Data. In the event that the Supplier or Customer wish the Supplier to process any Personal Data, the parties shall agree separately the necessary contractual terms upon which processing may be permitted which shall comply, as a minimum, with the requirements of Data Protection Legislation. The parties shall also ensure that where any arrangement pursuant to any Contract which involves the transfer of Personal Data between them in a Controller to Controller relationship, appropriate Personal Data-sharing contractual terms are also agreed between them.

12.2 The Supplier shall implement appropriate and effective controls, in accordance with good industry practice, to manage and mitigate all cyber security risks. If in the provision of the Goods and/or Services the Supplier becomes aware of any cyber security incident, or suspects a cyber security incident has or may occur, the Supplier shall promptly inform the Customer.

13. TERMINATION

13.1 On termination or expiry of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at 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.

13.4 Without affecting any other right or remedy available to it, the Customer may terminate the Contract: (a) at any time for convenience on the provision of 30 days' written notice; (b) with immediate effect at any time by giving written notice to the Supplier if: (i) the Supplier commits a material breach of any of the terms of this Contract which is not capable of remedy or, which is capable of remedy but the Supplier fails to remedy such breach within 30 (thirty) days of receipt of notice from the Customer specifying the breach and requiring the breach to be remedied; (ii) the Supplier breaches its obligations under Clause 9 (*Insurance*) Clause 10 (*Confidentiality*), or Clause 16 (*Fraud, Bribery and Corruption and Modern Slavery*); or (iii) the Supplier's conduct (or that of any of its officers or employees) is in the opinion of the Customer likely to bring the Customer's reputation into disrepute or the Supplier does or omits to do anything which may damage or impair the business or reputation of the Customer.

13.5 Either party may terminate the Contract with immediate effect: (a) if the other party (i) ceases or threatens to cease trade; (ii) becomes insolvent or an order for bankruptcy is made against it; (iii) is unable to pay its debts as they fall due; (iv) has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets; or (v) makes any composition or arrangement with its creditors, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or takes or suffers any similar or analogous procedure to or any of the foregoing events in any jurisdiction; or (b) in accordance with Clause 15 (*Force Majeure*).

13.6 The Supplier may terminate this Contract if the Customer fails to pay any charges duly invoiced by the due date for payment and remains in default not less than forty five (45 days) after being notified in writing by the Supplier to make such payment.

14. LIVING WAGE

14.1 In this Clause 14.:

(a) **Living Wage Foundation** means the Citizens UK Charity with charity number 1107264 and whose address is Jacquard Point 1 and 3, Tapestry Way, London, E1 2FJ; and

(b) **Real Living Wage** means the minimum hourly wage for workers as set by the Living Wage Foundation from time to time.

14.2 From the Commencement Date and for the duration of this Contract the Supplier shall pay and shall procure that any of its sub-contractors providing Goods and/or Services pursuant to this Contract will pay all directors, employees, agents, and consultants at an hourly rate or equivalent hourly rate no lower than the Real Living Wage.

15. FORCE MAJEURE

15.1 **Force Majeure Event**: acts of God, expropriation or confiscation of facilities, any form of Government intervention, war, hostilities, rebellion,

terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes. Force Majeure Event does not include strikes or other industrial action by employees of the party affected by the Force Majeure Event (the **Affected Party**) or its sub-contractors or any events caused directly or indirectly by an act or omission of the Affected Party or its sub-contractors.

15.2 Neither party shall be responsible for failure to carry out its duties under this Contract to the extent to which the failure is directly caused by a Force Majeure Event, provided that where the Affected Party is the Supplier, it:

- (a) has taken all reasonable steps to prevent and avoid the Force Majeure Event;
- (b) carries out its duties to the best level reasonable achievable in the circumstances of the Force Majeure Event;
- (c) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
- (d) on becoming aware of the Force Majeure Event promptly informs the Customer in writing that something has happened which is a Force Majeure Event, giving details of the Force Majeure Event, together with a reasonable estimate of the period during which the Force Majeure Event shall continue; and
- (e) tells the Customer when the Force Majeure Event has stopped.

15.3 If the Force Majeure Event prevents the Affected Party from materially complying with its obligations under this Contract and it continues for more than 30 (thirty) days, the party not affected may terminate the Contract with immediate effect by giving written notice to the affected party.

16. FRAUD, BRIBERY AND CORRUPTION AND MODERN SLAVERY

16.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and any guidance issued under the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010 to ensure compliance with the Bribery Act 2010 and will enforce them where appropriate;
- (d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- (e) adopt, implement, maintain, enforce and update (as necessary) adequate policies designed to prevent slavery and human trafficking from occurring;
- (f) provide adequate and regular training to its employees and officers in order to ensure an understanding of the Supplier's policies and procedures referred to in Clauses 16.1(c) and 16.1(e) above and their obligations arising from them on a continuing basis; and
- (g) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom.

16.2 The Supplier shall ensure that any person associated with it who is providing Goods and/or performing Services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 16 (the **Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

16.3 For the purposes of this Clause 16, whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 16.3, a person associated with the Supplier includes but is not limited to any sub-contractor or agent.

16.4 The Supplier represents and warrants that: (a) it has not been convicted of any offence involving slavery and human trafficking; and (b) to the best of its knowledge, it has not been or is the subject of any investigation, inquiry or enforcement proceedings by any regulatory, administrative, supervisory or governmental agency, body or authority regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16.5 The Supplier shall notify the Customer immediately in writing upon becoming aware of, or suspecting, any failure to comply with any provisions of this Clause 16.

16.6 Breach of this Clause 16 shall be deemed a material breach not capable of remedy that entitles the Customer to terminate this Contract pursuant to Clause 13.4.

17. GENERAL

17.1 Assignment and other dealings (a) The Customer may at any time assign,

novate or otherwise transfer this Contract or the burden and benefit of this Contract to any third party provided that it gives to the Supplier written notice of any such assignment, novation or transfer. The Supplier shall execute any documents which the Customer requires to effect the assignment, novation or transfer. **(b)** The Supplier shall not assign, novate or otherwise transfer or deal with its rights and obligations under this Contract. **(c)** This Contract shall be binding on the Customer and its successors and assignees and on the Supplier and its successors and permitted assignees. **(d)** The Supplier shall not sub-contract any of its obligations under this Contract without NTL's prior written consent. The Supplier may not appoint any sub-contractor who is not named on the Order for the purposes of performing its obligations under this Contract without the prior written consent of the Customer. The Supplier shall remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by the sub-contractors as if they were the Supplier's own acts and omissions. Any obligation in this Contract for the Supplier to do, or refrain from doing, any act or thing shall include an obligation on the Supplier to procure that its employees, officers, agents and subcontractors' employees, officers and agents similarly do or refrain from doing, such act or thing. **17.2 Notices.** Any notices required to be given under this Contract must be delivered personally or sent by prepaid first-class post or email transmission (provided that any email transmission is followed by service of notice in hard copy) to such address as each party may notify the other from time to time in writing, or, in the absence of such notification, to the party's registered office address. A notice delivered by hand is served when delivered, a notice sent by first-class post is served 48 hours after posting and a notice served by email is served when the email is sent (subject to proof of successful transmission and provided that it is followed by service in hard copy) provided that when the email is sent outside the normal working hours of the place of receipt, then it shall be deemed to be served on the next Working Day. **17.3 Severance.** If any term of this Contract is found to be illegal, invalid, or unenforceable under any applicable law, such term shall, to the extent it is severable from the remaining terms, be deemed omitted from this Contract and shall not affect the legality, validity or enforceability of the remaining terms. The Supplier and the Customer shall try to agree on a suitable clause to replace the one which is deemed omitted. The new clause should, as far as possible, achieve the same economic, legal and commercial aims of the omitted one. **17.4 Waiver.** No failure or delay by either party to exercise any right or remedy under this Contract shall be construed as a waiver of that right or remedy, nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of this Contract shall be considered as a waiver of a preceding or subsequent breach. **17.5 No partnership or agency.** The Supplier is an independent contractor dealing at arm's length and nothing in this Contract shall be deemed to constitute a partnership, joint venture, co-ownership or any employment relationship between the parties nor, except as expressly provided in this Contract, shall anything in this Contract be deemed to constitute one party as the agent of the other for any purpose or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither party shall hold itself out as having authority to do the same. **17.6 Entire agreement.** This Contract (and to the extent applicable, any Framework Agreement pursuant to which this Contract has been entered into) replaces all previous agreements between the Customer and the Supplier and is the entire agreement between the Customer and the Supplier for the Goods and/or the Services.

17.7 Variation. A purported variation of this Contract is not effective unless made in writing and signed by or on behalf of each of the parties. **17.8 Remedies not exclusive.** Except as expressly provided under this Contract, the rights and remedies contained in this Contract are cumulative and are not exclusive of any other rights or remedies provided by law or otherwise. **17.9 Further assurance.** Each party shall at the request and expense of the other party execute any document and do anything reasonably necessary to implement this Contract and use all reasonable endeavours to procure that a third party executes any deed or document and does anything reasonably necessary to implement this Contract. **17.10 Third parties.** The parties do not intend any third party to have the right to enforce any provision of this Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Notwithstanding that any term of this Contract may be or become enforceable by a person who is not a party to it, the terms of this Contract or any of them may be varied, amended or modified or this Contract may be suspended, cancelled or terminated by agreement in writing between the parties or this Contract may be rescinded, in each case without the consent of the third party. **17.11 Governing law and jurisdiction.** This Contract and any non-contractual

obligations arising in connection with it shall be governed by English law. The English courts shall have exclusive jurisdiction to determine any dispute arising in connection with this Contract, including disputes relating to any non-contractual obligations.

17.12 Key Contract The Supplier acknowledges and agrees that this Contract may be designated a key contract by the Secretary of State and that the effect of such designation shall be that the Customer will be required to procure that

the Supplier enters into a direct agreement with the Secretary of State. The Supplier further agrees and acknowledges that it shall enter into the Secretary of State's form of direct agreement with the Secretary of State as soon as reasonably practicable and in any event by such date as may be stipulated by the Secretary of State.