



**PTSG**

PREMIER TECHNICAL  
SERVICES GROUP LTD

*Niche Specialist Service Provider*

# Standard Terms and Conditions for the Supply of Service

# 1. DEFINITIONS AND INTERPRETATION

## 1.1. The following definitions and rules of interpretation apply in these conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6 (Invoicing and payment).

**Commencement Date:** has the meaning given in clause 2.2. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.4.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

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

**Customer Default:** has the meaning set out in clause 4.2. **Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, the Customer's acceptance of a quotation by the Supplier, or overleaf, as the case may be.

**PTSG:** means Premier Technical Services Group Limited a company registered in England with Company Number 06005074 and registered office at 13-14 Flemming Court, Whistler Drive, Castleford, WH10 5FW and any of its subsidiaries;

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

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer.

**Supplier:** the company named in the Order or Quotation forming part of the Contract which for the avoidance of doubt shall be a group company of PTSG.

**Supplier Materials:** has the meaning set out in clause 4.1.7.

## 1.2. Interpretation:

- 1.2.1. Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision: (a) is a reference to it as amended, extended or re-enacted from time to time; and (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2. 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.
- 1.2.3. A reference to writing or written includes faxes and emails.

## **2. BASIS OF CONTRACT**

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. Unless otherwise stated in any specific quotation, all quotations given by the Supplier shall not constitute an offer and is only valid and open for acceptance for a period of fourteen (14) Business Days from its date of issue.

## **3. SUPPLY OF SERVICES**

- 3.1. The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. The Supplier shall use all reasonable endeavours to meet any performance dates specified in in the Order Form (or where provided our quotation), but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. The Supplier reserves the right to amend the specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 4. OBLIGATIONS

### 4.1. The Customer shall:

- 4.1.1. ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- 4.1.2. co-operate with the Supplier in all matters relating to the Services;
- 4.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- 4.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 4.1.5. prepare the Customer's premises for the supply of the Services;
- 4.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 4.1.7. keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 4.1.8. comply with any additional obligations as set out in the Specification; and
- 4.1.9. make Supplier aware, in a timely fashion and no later than the delivery date, of any additional requirements which it requires the Supplier to comply with in delivery of the Services .

### 4.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 4.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 4.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. PRICING

- 5.1. The Charges for the Services shall be calculated on a time and materials basis:
- 5.1.1. the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Supplier's Quotation or otherwise appended to the Order;
  - 5.1.2. the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
  - 5.1.3. the Supplier shall be entitled to charge an overtime rate of 1.5 per cent of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1.2; and
  - 5.1.4. the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2. The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.3. Unless otherwise stated in a Quotation, prices given by the Supplier are based upon costs of goods, materials, labour, sub-contracts, transport, taxes and duties ruling at date of the Quotation and on Services being undertaken during normal working hours.
- 5.4. The Customer will, in addition to any stated charges, be liable to for:
- 5.4.1. any works carried out by the Supplier at the Customer's their request notwithstanding the same not being documented in the Quotation or Order;
  - 5.4.2. any works carried out by the Supplier arising from any inadequate or inaccurate instructions or drawings given to the Supplier by the Customer or arising from the Customer failing to comply with any of these Conditions.
  - 5.4.3. any additional costs payable by the Customer as a result of any variation or additional work required, ordered or approved by, or on behalf of, the Customer will, where not previously agreed, and be charged at rates (together with a percentage in respect of overheads and profit) based upon cost of goods, materials, labour, sub-contracts, transport duties and taxes prevailing at the time work is carried out in accordance with the "definition of prime cost of day work" issued by the RICS and ECA as appropriate, current at the time the work is carried out.
- 5.5. It is incumbent upon the Customer to confirm any variation in writing and wherever possible, agree the appropriate rates prior to commencement of the variation works.
- 5.6. Unless otherwise expressly stated the Supplier's price is open for acceptance for 30 days from the date of quotation. Notwithstanding this, the Supplier will be reimbursed by the equipment owner or his agents for the net cost to the Supplier of any additional government tax, surcharge or other statutory imposition, which may apply to the work during the currency of the agreement.
- 5.7. All drawings, illustrations in catalogues, price lists and other advertising materials must be treated by the Customer as approximate representations only and are not binding in detail and none shall form the part of a contract.
- 5.8. The Supplier will undertake on site measurements during an initial site visit for which the Supplier may, at the Supplier's sole discretion levy a reasonable charge. Thereafter, charges will be made for each subsequent visit and a reasonable delivery time will have to be allowed from the time when on site measurements are finalized which allow the Supplier's designs to be completed.

## 6. INVOICING AND PAYMENT

- 6.1. The Supplier shall invoice the Customer on completion of the Services.
- 6.2. The Supplier will be entitled to submit interim invoices in respect of Services performed, work undertaken and goods or materials delivered up to the date of the invoice at intervals to be specified and upon completion of such Services, Supplier will submit invoices to the Customer for the value of the completed work.
- 6.3. In cases where the Supplier has stated in its Quotation that payment may be made on the provision of an architect's, engineer's or surveyor's certificate, such payment must be made in full within thirty (30) days of date of issue of such certificate.
- 6.4. The Customer shall pay each invoice submitted by the Supplier:
  - 6.4.1. within thirty (30) days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - 6.4.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - 6.4.3. time for payment shall be of the essence of the Contract.
- 6.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.6. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.8. In cases where Supplier is providing installation services under the Contract and the price payable by the Customer under that Contract to the Supplier exceeds £20,000 (excluding VAT, deliverables and disbursements), Supplier agrees that the Customer may, provided that it has paid the Supplier all other amounts in full, retain an amount not exceeding 2.5% of the Contract price. All amounts retained by the Customer will be repayable in full by the Customer to the Supplier within twelve (12) months from the date of practical completion of the Services provided by Supplier and the release by the Customer of any retained amounts by that date shall not be linked to the practical completion of any other works, projects, building or services of the Customer. For the avoidance of doubt, in respect of Contracts with a total price of less than £20,000 (excluding VAT, deliverables and disbursements) for any Services, the Customer shall have no rights to apply a retention.
- 6.9. The party placing the Order (the 'Customer') shall be fully liable for all fees, costs and charges associated with the services provided, whether or not they are acting on behalf of a third party. Where a party places an Order as an agent or representative of a third party, such party shall remain jointly and severally liable with the principal for all payment.

## 7. SPECIAL TERMS

- 7.1. The Special Terms set out in schedule 1 shall apply where any are included in that schedule.

## 8. TITLE AND RISK

- 8.1. The property, in goods or materials, taxed or untaxed, supplied under the Contract, (“the Deliverables”) will not pass to the Customer until all sums due to the Supplier in respect of those Deliverables are paid in full in cleared funds.
- 8.2. Until ownership of the Deliverables has passed to the Customer in accordance with clause 8.1, the Customer must:
  - 8.2.1. hold the Deliverables on a fiduciary basis as the Supplier’s bailee;
  - 8.2.2. store the Deliverables separately at no cost to the Supplier;
  - 8.2.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Deliverables;
  - 8.2.4. maintain the Deliverables in a satisfactory condition insured on behalf of the Supplier to the Supplier’s reasonable satisfaction for their full replacement value against all risks including theft from any site on which they are located. On request the Customer will produce the policy of insurance to the Supplier; and
  - 8.2.5. hold the proceeds of any insurance claim referred to in clause 8.2.4 on trust for the Supplier and keep them separate from any other monies and not pay the proceeds into any overdrawn bank account.
- 8.3. The Customer’s right to possession of the Deliverables shall terminate immediately if:
  - 8.3.1. the Customer has a bankruptcy order made against them or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any legislation for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer;
  - 8.3.2. the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between us and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - 8.3.3. the Customer encumbers or in any way charges any of the Deliverables.
- 8.4. The Supplier shall be entitled to recover payment for the Deliverables notwithstanding that their ownership has not yet passed from the Supplier.
- 8.5. The Customer grants the Supplier, its agents and employees an irrevocable right at any time to enter any premises (subject to compliance with any health and safety requirements or site protocols) where the Deliverables are or may be stored in order to inspect them, or, where the Customer’s right to possession has terminated, to recover them.
- 8.6. All Deliverables fixed or unfixed on any site at which the Supplier will be performing Services site will be at the sole risk of the Customer. The cost of repairing or replacing any such Deliverables will be charged by the Supplier as additional cost item on its invoice.
- 8.7. All plant and equipment brought by the Supplier to any site at which it will be performing Services will remain the property of the Supplier at all times.

## 9. LIABILITY AND INSURANCE:

- 9.1. Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; or (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2. Subject to clause 9.1 and clause 9.4, notwithstanding any other provision of this agreement or any terms of any Main Contract or any deemed or implied terms, each party's total aggregate liability to the other under this Subcontract shall not exceed the greater of: (a) an amount equal to 100% of the total aggregate fees paid or payable to the Sub-contractor in the previous twelve (12) months under this Subcontract; and (b) ten thousand pounds sterling (£10,000).
- 9.3. The caps on the Supplier's liabilities shall be reduced by: (a) payment of an uncapped liability; (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 9.4. Subject to clause 9.1 and clause 9.7 and, this clause 9.4 sets out the types of loss that are excluded: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of or damage to goodwill; and (g) indirect or consequential loss.
- 9.5. The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.6. Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.7. Nothing in this clause shall limit the Customer's payment obligations under the Contract.
- 9.8. References to liability in this clause include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.9. The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10,000,000 in the aggregate. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 9.10. This clause 8 shall survive termination of the Contract.

## 10. TERMINATION

- 10.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party three months' written notice.
- 10.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 10.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - 10.2.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 10.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 10.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
  - 10.4.1. the Customer fails to pay any amount due under the Contract on the due date for payment;
  - 10.4.2. the Customer becomes subject to any of the events listed in clause 10.2.3 to clause 10.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
  - 10.4.3. the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 10.2.2.

## **11. CONSEQUENCES OF TERMINATION**

11.1. On termination or expiry of the Contract:

11.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

11.1.2. the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3. 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.

## **12. DATA PROTECTION**

12.1. The parties shall comply with their data protection obligations as set out in schedule 2.

## **13. INTELLECTUAL PROPERTY RIGHTS**

13.1. 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.

13.2. 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 perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

13.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 13.2.

13.4. 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 to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

13.5. For the purposes of these Conditions, Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, 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.

## 14. Confidentiality.

- 14.1. Each party 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, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2. Each party may disclose the other party's confidential information:
- 14.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
  - 14.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 15. Notices.

- 15.1. Any notice or other communication given to a party under or in connection with the 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 (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the definition of Supplier with a copy to [legal@ptsg.co.uk](mailto:legal@ptsg.co.uk)
- 15.2. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (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; or (c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 15.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 16. GENERAL

- 16.1. Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 16.2. Assignment and other dealings. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 16.3. Entire Agreement. The Contract 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. Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 16.4. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.5. Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.6. Severance. 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 this agreement. If any provision or part-provision of this Contract deleted under this clause 16.6 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.
- 16.7. Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 16.8. Governing law. 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 by and construed in accordance with the law of England and Wales.
- 16.9. Jurisdiction. 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.

## Schedule 1 – Special Terms

1. Notwithstanding clauses 5.1, 5.4 and 5.5 of the Standard Terms, the Supplier shall not charge for any variation, additional work, overtime, expenses, third-party costs or materials unless the Customer has issued a written change order approving scope and price in advance.
2. Clause 5.2 (RPI increase) shall not apply unless expressly agreed in writing, signed by both parties.
3. Clause 6.7 is replaced with: “The Customer may withhold and/or set off any amount reasonably disputed in good faith, provided it notifies the Supplier of the dispute and basis within a reasonable time. Undisputed amounts remain payable in accordance with clause 6.4.”
4. The Supplier shall not suspend Services solely due to a bona fide dispute where the Customer has paid all undisputed sums.
5. Nothing in clause 9.4 excludes the Customer’s right to recover (i) the cost of re-performance/re-supply to achieve compliance, and (ii) losses arising from Supplier breaches of confidentiality, data protection, or third-party IP infringement.
6. Clause 9.6 is replaced with: “Claims may be brought within the applicable statutory limitation period; the Customer will notify the Supplier as soon as reasonably practicable after becoming aware of a claim.”
7. Clause 16.2 is amended so the Supplier may not assign the Contract or subcontract material obligations without the Customer’s prior written consent (not to be unreasonably withheld or delayed), save that subcontracting to Affiliates is permitted where the Supplier remains fully liable for performance.

## Schedule 2 - Data Protection

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Legislation.
2. The parties acknowledge that for the purposes of the Data Protection Legislation, where either the Controller or the Processor provide any Personal Data to the other, the providing party is, as between the parties, is the Controller and the recipient of the Personal Data is, as between the parties, the Processor.
3. Without prejudice to the generality of paragraph 1, the Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Processor and/or lawful collection of the Personal Data by the Processor on behalf of the Controller for the duration and purposes of this agreement.

4. Without prejudice to the generality of paragraph 1, the Processor shall, in relation to any Personal Data processed in connection with the performance by the Processor of its obligations under this agreement:
  - 4.1 process that Personal Data only on the documented written instructions of the Controller unless the Processor is required by Domestic Law to otherwise process that Personal Data. Where the Processor is relying on Domestic Law as the basis for processing Personal Data, the Processor shall promptly notify the Controller of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Processor from so notifying the Controller;
  - 4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Controller, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer;
    - (b) the data subject has enforceable rights and effective legal remedies;
    - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (d) the Processor complies with instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - 4.5 assist the Controller, at the Controller's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 4.6 notify the Controller without undue delay on becoming aware of a Personal Data Breach;
  - 4.7 at the written direction of the Controller, delete or return Personal Data and copies thereof to the Controller on termination of the agreement unless required by Domestic Law to store the Personal Data; and
  - 4.8 maintain complete and accurate records and information to demonstrate its compliance with this paragraph and allow for audits by the Controller or the Controller's designated auditor and promptly inform the Controller if, in the opinion of the Processor, an instruction infringes the Data Protection Legislation.
5. The Controller consents to the Processor appointing the sub-processor as named in the Order or Quotation as a third-party processor of Personal Data under this agreement. The Processor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this paragraph and in either case which the Processor confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Controller and the Processor, the Processor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph.