

# **OVO Standard Terms and Conditions for the Supply of Goods and /or Services**

**Version 1.0  
2 February 2021**



## 1. Interpretation

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

### 1.1 Definitions:

**Affiliate:** means, in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

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

**Commencement Date:** has the meaning given in 2.2.

**Conditions:** these terms and conditions.

**Contract:** the contract between the Customer and the Supplier for the supply of Goods and/or Services which incorporates these Conditions and the Order.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** will be construed accordingly.

**Customer:** means OVO Energy Limited, or the OVO group company identified in the Order.

**Customer Materials:** has the meaning set out in 5.3(i).

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** all documents, products and materials developed by the Supplier 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 Location:** has the meaning given in 4.2(b).

**Goods:** the goods (or any part of them) to be supplied by the Supplier as set out in the Order.

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

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service 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 trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

**Services:** the services, including any Deliverables, to be provided by the Supplier as described in the Order, the Service Specification (if any) and anything created or produced as a result of the Services.

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

**Supplier:** the person or firm from whom the Customer purchases the Goods and/or Services.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

### 1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes email.

## 2. Basis of contract

2.1 If the Supplier has signed a written agreement on bespoke terms with the Buyer identified in the Order, that agreement will apply to the Order to the exclusion of any other terms. If the supplier has not signed such an agreement, the Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order will 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 will come into existence (**Commencement Date**).

**The Supplier must not accept the Order and must tell the Customer immediately if it does not wish to accept these Conditions.**

2.3 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 law, trade custom, practice or course of dealing.

2.4 All of these Conditions will apply to the supply of both Goods and Services except where the application to one or the other is specified.

### **3. Supply of Goods**

3.1 The Supplier will be responsible for obtaining all information to enable it to comply with the Order and to provide the Goods to the Customer in accordance with the Order.

3.2 The Supplier will ensure that the Goods will:

(a) correspond with their description, the manufacturer's specification for such goods 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, and in this respect the Customer relies on the Supplier's skill and judgement;

(c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for at least 12 months after delivery or such longer period as may be specified in the Order; and

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

3.3 The Supplier will 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.

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

3.5 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at 3.1, the Customer will inform the Supplier and the Supplier will immediately take such remedial action as is necessary to ensure compliance.

3.6 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

### **4. Delivery of Goods**

4.1 The Supplier will ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material will only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier will deliver the Goods:

(a) on the date specified in the Order or, if no such date is specified, then within a reasonable period of time from the date of the Order;

(b) to the Customer's premises as is 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 Business Day or as instructed by the Customer.

4.3 Delivery of the Goods will be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier delivers less or more of the quantity of Goods ordered, the Customer may reject the Goods or the excess Goods, and any rejected Goods will be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier will make a pro rata adjustment to the invoice for the Goods.

4.5 The Supplier will not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment will entitle the Customer to the remedies set out in 6.1.

4.6 Title and risk in the Goods will pass to the Customer on completion of delivery.

### **5. Supply of Services**

5.1 The Supplier will 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.

5.2 The Supplier will meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier.

5.3 In providing the Services, the Supplier will:

(a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

(d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables will be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;

- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) 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;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (j) 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.

## **6. Customer remedies**

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer will, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies:

- (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 recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) 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.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer will have one or more of the following rights and remedies, 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;

(e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods 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 supply Goods in accordance with 3.1.

6.3 If the Supplier has supplied Services that do not comply with the requirements of 5.3(d) then, without limiting or affecting other rights or remedies available to it, the Customer will have one or more of the following rights and remedies:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

(b) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);

(c) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(d) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and

(e) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with 5.3(d).

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

6.5 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.

## **7. Customer's obligations**

7.1 The Customer will:

(a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;

(b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8. Charges and payment**

8.1 The price for the Goods:

(a) will 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 in force at the Commencement Date; and

(b) will be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by the Customer.

8.2 The charges for the Services will be set out in the Order, and will be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges will include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Supplier will invoice the Customer on or at any time after completion of delivery. In

respect of Services, the Supplier will invoice the Customer on completion of the Services. Each invoice will 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.

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

8.5 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 Supplier to the Customer, the Customer will, 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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party will 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 will accrue each date at 3% a year above the Bank of England's base rate from time to time. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date.

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

8.8 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause will not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **9. Intellectual property rights**

9.1 The Supplier warrants represents and undertakes to the Customer:

(a) that it has full clear, unencumbered and unrestricted title to all Goods transferred to the Customer (and any goods that are transferred to the Customer as part of the Services), including without limitation the Deliverables or any part of them and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer; and

(b) it has the authority to grant to the Customer any rights to be granted under this Contract and has and shall continue to have all third party rights, title, accreditations and consents necessary to perform its obligations under this Contract; and

(c) the receipt and use of the Goods and Services shall not infringe the Intellectual Property Rights or any other rights or any third party.

9.2 The Supplier hereby assigns to the Customer, with full title guarantee and free from all third party rights, all newly created Intellectual Property Rights in the output of the performance of the Services in each case from the date of its creation, including for the avoidance of doubt the Deliverables.

9.3 The Supplier shall not, except as permitted by the Customer in writing, use or permit the use of any corporate name or any trading name of the Customer or any intellectual property rights existing therein.

9.4 In respect of any Intellectual Property Rights supplied to the Customer by the Supplier under or in connection with the Contract and which are not assigned to the Customer under Clause 9.2, the Supplier hereby provides, or (where applicable) shall procure the provision of, such Intellectual Property Rights to the Customer on the basis of a non-exclusive, freely transferable licence in perpetuity for the Customer to use and sub-licence such Intellectual Property Rights for all purposes associated with the business of the Customer (the "**Licence**").

9.5 The Supplier shall grant or procure the grant of the Licence to the Customer on the earlier of the date of first use of such Intellectual Property Rights in the Services and the date of payment of any sum due under the Contract.

9.6 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9.7 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 9.

9.8 All Customer Materials are the exclusive property of the Customer.

9.9 The Customer grants the Supplier a non-exclusive, non-transferable licence of any Intellectual Property Rights to which the supply of the Goods and/or Services is subject to the extent necessary to permit the Supplier to perform its obligations in accordance with these Conditions.

## **10. Indemnity**

10.1 The Supplier will indemnify the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in connection with:

(a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);

(b) 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, defects in the Goods, as delivered, or the Deliverables; and

(c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

10.2 This clause 10 will survive termination of the Contract.

#### **11. Liability and Insurance**

11.1 Neither party excludes or limits liability to the other for (i) death or personal injury as a result of its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other loss which by law cannot be excluded or limited.

11.2 Subject to clause 11.1, neither party shall be liable to the other under or in connection with this Contract for any loss, claim, liability, expense or damage in excess of (a) £1,000,000 in respect of direct loss of, or damage to, the tangible property of the other and (b) (ii) an amount equal to 200% of the Charges for any other loss, claim, liability, expense or damage, in each case per event or series of connected events and whether caused by breach of contract, negligence or breach of statutory or other duty.

11.3 During the term of the Contract and for a period of 6 years thereafter, the Supplier will maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and will, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

#### **12. Confidentiality**

12.1 Each party undertakes that it will not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or its Affiliates, except as permitted by 12.2.

12.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party will ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party will use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### **13. Compliance with relevant laws and policies**

13.1 In performing its obligations under the Contract, the Supplier will comply with all applicable laws, statutes, regulations and codes from time to time in force.

13.2 The Supplier will comply with the Customer's 'supplier code of conduct' found at <https://ovo.com/supplier-code-of-conduct>.

13.3 The Supplier will ensure that Supplier's employees, workers, contractors and agents, when on OVO premises and when accessing OVO facilities, computer systems and information, comply with all requirements and directions of OVO in regard to conduct, behaviour, protection of privacy, use of IT systems, safety and security.

#### **14. Security Requirements**

14.1 All data transferred by means of an electronic and/or hard copy between the Buyer and the Seller, whether or not it is part of the Order or forms part of the Order, must be transferred securely ensuring integrity and confidentiality of the data is not compromised. The most appropriate method of transfer must be agreed by both parties depending on the sensitivity and nature of the data. In the event that there is a loss of any data whatsoever or the data has been mishandled howsoever, then the Supplier is wholly responsible for notifying the Buyer in a timely manner and indemnifying the Buyer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Buyer may incur as a result of such loss or mishandling.

14.2 Without prejudice to clause 14.1, the Supplier will ensure that:

(a) all software used by or on behalf of the Supplier to perform its obligations under this Contract has been tested using up-to-date anti-virus checking software and shall be free from viruses or other malicious codes;

(b) in accordance with good industry practice, take all necessary steps to not introduce nor permit the introduction of any viruses or other malicious into any Customer systems and ensure that it uses up-to-date anti-virus protection measures in respect of the interfaces with the Customer's systems and maintain a security patch cycle to keep all systems current;

(c) employ good industry practice safeguards designed to prevent the occurrence of internal or external attacks on its systems, including hacking, denial of service, phishing and similar phenomena;

(d) not attempt to access, use or interfere with the communications systems, information technology systems or data used by the Customer unless expressly authorised to do so under this Agreement or agreed in writing between the parties;

(e) regularly monitor their security policies and standards and assess whether they remain appropriate and are in-line with its obligations in this clause 14.

#### **15. Anti-bribery**

15.1 The Supplier shall not give, nor offer to give, anyone employed by the Customer an inducement of any kind, or any gift that could be perceived by others to be a bribe.

15.2 The Supplier shall (i) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); (ii) have and maintain in place through the term of Contract its own policies and

procedures including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements; (iii) immediately tell the Customer in writing if it becomes aware of, or suspects, any failure to comply with the Relevant Requirements; (iv) not do or omit to do any act that shall cause or lead the Customer to be in breach of any of the Relevant Requirements. The Supplier shall notify the Customer immediately if it considers it may be in breach of its obligations under this clause 15. The Supplier shall indemnify the Customer against all and any liabilities which the Customer or its group may suffer or incur arising out of or in connection with the Supplier group's failure to comply with this clause 15. Any breach of this clause 15 shall be a breach which is considered incapable of remedy.

## **16. Data protection**

16.1 This clause 16 applies to the extent that the Supplier processes any personal data in connection with the performance by the Supplier of its obligations under the Contract. This 16 in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

16.2 In this clause 16, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

16.3 Without prejudice to the generality of 16.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.

16.4 Without prejudice to the generality of 16.1, the Supplier will, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier will promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and

access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a personal data breach;

(g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

16.5 Either party may, at any time on not less than 30 days' notice, revise this clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which will apply when replaced by attachment to the Contract).

## **17. Termination**

17.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

(a) with immediate effect by giving written notice to the Supplier if:

(i) there is a change of Control of the Supplier; or

(ii) the Supplier commits a breach of 13 (Compliance with relevant laws).

(b) for convenience by giving the Supplier 1 months' written notice.

17.2 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:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) 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), obtaining a moratorium, 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;
- (c) 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.

## **18. Consequences of termination**

18.1 On termination of the Contract, the Supplier will 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 will be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

18.2 Termination or expiry of the Contract will 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.

18.3 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 will remain in full force and effect.

## **19. Force majeure**

Neither party will 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. In such circumstances the time for performance will be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

## **20. General**

### **20.1 Assignment and other dealings.**

- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier will not 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 without the prior written consent of the Customer.

**20.2 Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier will remain responsible for all the acts and omissions of its subcontractors as if they were its own.

**20.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 20.3 the parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**20.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will 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 will prevent or restrict the further exercise of that or any other right or remedy.

**20.5 No partnership or agency.** Nothing in the Contract is intended to, or will 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.

**20.6 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.

### **20.7 Third party rights.**

(a) 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.

(b) The Customer will be entitled to allow the use and benefit of the Services to be extended to any Affiliate of the Customer (a **Service Recipient**).

(c) The Supplier acknowledges that the Customer has entered into this Contract for its own benefit and for the benefit of, and as agent for, each Service Recipient. The Supplier acknowledges that each Service Recipient obtains the benefit of the rights, acknowledgments, undertakings, warranties and indemnities granted under this Agreement. Service Recipients will be entitled to enforce such rights, acknowledgments, undertakings, warranties and indemnities against the Supplier as if they were parties to this Agreement. Alternatively any loss or damage suffered by each such Service Recipient may at the Customer's sole discretion be deemed to have been suffered by the Customer in addition to loss or damage suffered by the Customer itself.

20.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, the quantities, type, physical structure, specifications or standards, will be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

20.9 **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 will be governed by and construed in accordance with the law of England and Wales.

20.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales will 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.