

# EAKIN HEALTHCARE GENERAL TERMS (SUPPLY OF GOODS AND SERVICES)

THESE GENERAL TERMS APPLY TO THE CONTRACT (AS DEFINED BELOW) BETWEEN THE CUSTOMER AND SUPPLIER 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.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these General Terms, the following definitions apply:

Business Day	a day other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Belfast are open for business.
Commencement Date	has the meaning given in clause 2.2.
Contract	means the contract between the Purchaser and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
Customer	the person or firm identified in the Purchase Order who purchases the Goods and/or Services from the Supplier;
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 clause 4.2.2.
General Terms	these terms and conditions as amended from time to time in accordance with clause 18.11
Goods	the goods (or any part of them) set out in the Purchase 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 or otherwise referred by or detailed in the Order.
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 and trade dress, 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.
Purchase Order	the Customer's purchase order for the supply of Goods and/or Services as set in the Purchaser's purchase order or in the Purchaser's written acceptance of the Supplier's quotation, as the case may be;
Services	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
Service Specification	the description or specification for Services agreed in writing by the Customer and the Supplier or otherwise referred by or detailed in the Order.
Supplier	the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 In these General Terms, the following rules apply

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3 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.
- 1.2.4 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.

- 1.2.5 A reference to writing or written excludes fax but includes email, save as stated otherwise in these Conditions.

## **2. BASIS OF THE CONTRACT**

- 2.1 The Purchase Order constitutes an offer by the Purchaser to purchase Goods and/or Services from the Supplier in accordance with these General Terms.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing written acceptance of the Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (Commencement Date)
- 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 General Terms shall 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 shall ensure that the Goods shall:
- 3.1.1 correspond with their description and any applicable Goods Specification;
  - 3.1.2 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;
  - 3.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
  - 3.1.5 be accompanied by any certification, analysis or report as to authenticity, composition and/or quality as is specifically referred to in the Order as a requirement.
- 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 Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.4 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 clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 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 shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
  - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase 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 (as either detailed in the Purchase Order or with the Customer's subsequent agreement in writing), the outstanding balance of Goods remaining to be delivered.

- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 on the date specified in the Purchase Order or, within the period specified in the Purchase Order, if no such date or period is specified, then within 8 weeks of the date of the Purchase Order;
  - 4.2.2 to such location as is set out in the Purchase Order or as instructed by the Customer before delivery (Delivery Location)
  - 4.2.3 during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If the Supplier:
- 4.4.1 delivers less than 90% of the quantity of Goods ordered, the Customer may reject the Goods; or
  - 4.4.2 delivers more than 110% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall 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 shall make a pro rata adjustment to the invoice for the Goods.

- 4.5 The Supplier shall not deliver the Goods in instalments unless set out in the Order or otherwise agreed in writing with the Customer in advance. 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 shall entitle the Customer to the remedies set out in clause 6.1.

- 4.6 Title and Risk in the Goods shall pass to the Customer on completion of delivery.

## 5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the Commencement Date or the date set out in the Order (if different) 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 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.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
  - 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 5.3.3 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;
  - 5.3.4 ensure that the Services will conform with all descriptions, standards 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;
  - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
  - 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises should attendance at the premises be required;
  - 5.3.9 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;
- 5.3.10 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
  - 5.3.11 comply with any additional obligations as set out in the Service Specification or the Order.
- 5.4 The Customer shall:
- 5.4.1 where applicable, provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
  - 5.4.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing 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 shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - 6.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
  - 6.1.4 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
  - 6.1.5 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 Goods are not delivered by the applicable date or the Services are not performed by the applicable date, or both, the Customer may, at its option, claim or deduct 5% of the price of the Goods for each week's delay in delivery of the Goods and/or claim or deduct 5% of the price of the Services for each week's delay in performance of the Services, in each case by way of liquidated damages, until the earlier of delivery of the Goods or performance of the Services, as applicable, or termination or abandonment of the Contract by the Customer, up to a maximum of 20% of the total price of the Goods (in respect of late delivery of the Goods) and up to a maximum of 20% of the total price of the Services (in respect of late performance of the Services). If the Customer exercises its rights in respect of late delivery under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late delivery of the Goods. If the Customer exercises its rights in respect of late performance under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late performance of the Services.
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- 6.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.3.2 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;
  - 6.3.3 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);
  - 6.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 6.3.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
  - 6.3.6 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 3.1.
- 6.4 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3.4 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

- 6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.6 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 shall:
  - 7.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;
  - 7.1.2 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:
  - 8.1.1 shall be the price set out in the Purchase Order;
  - 8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goodsand no extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.2 The charges for the Services shall be set out in the Order and shall 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 shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 Unless provided to the contrary in a particular Purchase Order:
  - 8.3.1 in respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery; and
  - 8.3.2 in respect of Services, the Supplier shall invoice the Customer on completion of the Services.
- 8.4 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.
- 8.5 In consideration of the supply of Goods and/or Services by the Supplier, and unless an Order states otherwise, the Customer shall pay the invoiced amounts within 30 days of the end of the month in which a correctly rendered invoice is received to a bank account nominated in writing by the Supplier.
- 8.6 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 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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.7 The Supplier shall have no right to suspend subsequent performance of the Services and/or delivery of the Goods in the event of disputed or late payment of any amounts payable by the Customer under the Contract.
- 8.8 The Supplier represents and warrants to the Purchaser that the price for the Goods and the charges for the Services offered to the Purchaser under the Contract are no less favourable than the prices and charges offered to any other party purchasing similar quantities. In the event the Supplier offers more favourable prices or charges to any other party, the Supplier will promptly notify the Purchaser of such event and offer such more favourable prices or charges to the Purchaser commencing upon the date such more favourable prices or charges were offered to the other party.
- 8.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.10 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. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. 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 or otherwise.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under the Contract, including the Deliverables or any part of them, the Supplier warrants that it has full, clear, and unencumbered title to all such items, 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.

9.2 All materials, equipment, tools, tooling, moulds, drawings, plans, specifications, prototypes, operating instructions, software, inventions, processes, photographs, data, and other documents and information which have been either:

- 9.2.1 supplied by the Customer to the Supplier;
- 9.2.2 procured by or on behalf of the Supplier at the Customer's cost; or
- 9.2.3 created or developed by or on behalf of the Supplier in contemplation of the supply of the Goods and/or Services (Customer Materials),

shall be and remain the exclusive property of the Customer. The Supplier shall hold all Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition, and not dispose of, use, or reproduce the Customer Materials except in accordance with the Customer's written instructions or authorisation.

9.3 The Supplier hereby assigns to the Customer, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in and to:

- 9.3.1 the products of the Services, including the Deliverables; and
- 9.3.2 the Customer Materials procured or created by or on behalf of the Supplier in accordance with clause 9.2.

9.4 The Supplier shall obtain waivers of all moral rights in:

- 9.4.1 the products of the Services, including the Deliverables; and
- 9.4.2 the Customer Materials procured or created by or on behalf of the Supplier in accordance with clause 9.2

to which any individual is now or may be at any future time entitled, ensuring that the Customer has full freedom to use and modify these materials without restriction.

9.5 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things, and execute 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 9.3.

9.6 To the extent that the Supplier requires any of the Intellectual Property Rights belonging to the Customer (including the Customer Materials) or any member of its group in the supply of the Goods and/or Services, those Intellectual Property Rights will be made available to the Supplier strictly on the basis of a personal, non-transferable, revocable, and non-exclusive licence (without the right to sub-license), solely for the purposes of supplying the Goods and/or Services under the Contract.

## **10. INDEMNITY**

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- 10.1.1 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);

- 10.1.2 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
- 10.1.3 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 shall survive termination of the Contract.

## **11. INSURANCE**

11.1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall 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 shall, 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 shall not at any time during the Contract and for a period of five years after termination 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 12.2

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

- 12.2.1 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 shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.2.3 Neither party shall 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 shall:

- 13.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 13.1.2 comply with the Mandatory Policies

## **14. DATA PROTECTION**

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 14, 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.

14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

14.3 Without prejudice to the generality of clause 14.1, 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.

14.4 Without prejudice to the generality of clause 14.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

- 14.4.1 Process personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to process personal data otherwise. Where the



- Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws, unless those Applicable Laws prohibit such notification.
- 14.4.2 Ensure that it has in place appropriate technical and organisational measures, reviewed by the Supplier to ensure compliance with Data Protection Legislation, to protect against unauthorised or unlawful processing of personal data and against accidental loss, destruction, or damage. These measures shall be appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction, or damage, and shall take into account the nature of the data to be protected, the state of technological development, and the cost of implementation. Such measures may include, where appropriate, pseudonymisation and encryption of 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.
- 14.4.3 Ensure that all personnel who have access to and/or process personal data are bound by a confidentiality obligation.
- 14.4.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Customer, and only where the following conditions are met:
- The Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - The data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - The Supplier complies with its obligations under the Data Protection Legislation by ensuring an adequate level of protection for any personal data transferred; and
  - The Supplier complies with reasonable instructions notified to it in advance by the Customer regarding the processing of personal data.
- 14.4.5 Assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation regarding security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators.
- 14.4.6 Notify the Customer without undue delay and, in any event, within 24 hours of becoming aware of a personal data breach.
- 14.4.7 At the written direction of the Customer, delete or return personal data and all copies thereof to the Customer upon termination of the Contract, unless required by Applicable Law to retain the personal data, in which case the Supplier shall inform the Customer of such obligation and the duration of retention.
- 14.4.8 Maintain complete and accurate records and information to demonstrate compliance with this clause 14 and allow for audits by the Customer or the Customer's designated auditor, provided that such audits are conducted upon reasonable prior notice and during normal business hours. The Supplier shall immediately inform the Customer if, in its opinion, an instruction infringes the Data Protection Legislation.
- 14.5 The Customer does not consent to the Supplier appointing any third party processor of personal data under the Contract without its prior written consent. Where such consent is given the Supplier confirms that it has 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 clause 14 and which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 14.
- 14.6 The Customer may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## 15. TERMINATION

15.1 Without limiting any other right or remedy available to it, the **Customer** may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- 15.1.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
- 15.1.2 the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of applicable insolvency legislation, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of applicable insolvency legislation, or (being a partnership) has any partner to whom any of the foregoing apply;
- 15.1.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 15.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company);
- 15.1.5 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- 15.1.6 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets, and such attachment or process is not discharged within 14 days;
- 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Supplier (being a company);
- 15.1.8 the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint, or has appointed, an administrative receiver;
- 15.1.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 15.1.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 15.1.1.2 - 15.1.1.9 (inclusive)
- 15.1.11 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
- 15.1.12 the Supplier's financial position deteriorates to such an extent that, in the Customer's opinion, the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 15.1.13 there is a change of Control of the Supplier.

15.2 The Customer may also terminate the Contract for convenience by giving the Supplier one month's written notice.

15.3 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:

- 15.3.1 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 28 days after being notified in writing to do so;
- 15.3.2 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), 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; or
- 15.3.3 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.

## 16. CONSEQUENCES OF TERMINATION

16.1 On termination 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.

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

16.3 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.

## **17. FORCE MAJEURE**

17.1 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. In such circumstances the time for performance shall 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, then regardless of which party is affected by the event, circumstance or cause in question, the Customer may terminate the Contract by giving 7 days' written notice to the Supplier.

## **18. GENERAL:**

18.1 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.

18.2 The Supplier shall 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.

18.3 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 shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

18.4 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

18.4.1 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

18.4.2 if sent by email to the address previously provided by the party.

18.5 Any notice or communication shall be deemed to have been received:

18.5.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

18.5.2 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 at the time recorded by the delivery service;

18.5.3 if sent by 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 18.5.3, 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.

18.6 The clauses above in respect of notices and communications do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.7 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 of the Contract is deemed deleted under this clause 18.7 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.

18.8 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 remedy. 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.

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

18.10 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.

18.10.1 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.

18.10.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.11 Except as set out in these General Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Purchaser.

## **19. GOVERNING LAW AND JURISDICTION**

19.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Northern Ireland.

19.2 Each party irrevocably agrees that the courts of Northern Ireland 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.