

## 1 Definitions

### 1.1 In these Terms:

**Affiliate** means (i) any company which is at the relevant time a subsidiary or holding company of a person or a subsidiary or holding company of any such subsidiary or holding company (the words “subsidiary” and “holding company” having the meanings given in section 1159 of the Companies Act 2006), and (ii) any other entity which is at the relevant time a subsidiary or holding entity of a person or a subsidiary or holding entity of any such subsidiary or holding entity, with “subsidiary entity” meaning an entity which is controlled by the relevant person and “holding entity” meaning an entity controlling the relevant person;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open for normal banking business in London;

**Business Hours** means 9.00 a.m. to 5.00 p.m. on a Business Day;

**Confidential Information** means information (in any form whatsoever) that is confidential to the EIS or to any third party to whom the EIS owes a duty of confidentiality (including the provisions of the Purchase Order, the terms of the Contract and the Materials), but excluding Confidential Information which, at the time of its disclosure by the EIS, is in the public domain otherwise than by breach of the terms of the Contract or law;

**Connected Persons** means any person either directly or indirectly involved in providing the Supplies, including the Supplier’s Affiliate(s) and any and all of the Supplier’s and each such Affiliate’s Personnel;

**Contract** means the contract between the EIS and the Supplier consisting of: (i) the Purchase Order; (ii) these Terms; (iii) the Supplier’s acceptance or deemed acceptance; (iv) any Specification; (v) any other documents notified in writing by the EIS to the Supplier; and (vi) the policies and procedures of the EIS, as notified to the Supplier from time to time;

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (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 the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**Delivery Address** means the location(s) where the Supplies are to be delivered, as specified in the Purchase Order or advised by the EIS to the Supplier within a reasonable time before such delivery;

**Delivery Date** means the delivery date(s) for the Supplies as may be set out in the Purchase Order or otherwise in the Contract;

**EIS** means The English Institute of Sport Limited, a company established under the Companies Act (registered number 04420052) and having its registered office at 299 Alan Turing Way, Manchester M11 3BS;

**Goods** mean any goods, products, materials or other tangible items (including any instalment or any part of them) that are specified in the Purchase Order or supplied in the course of performing obligations under the Contract;

**Insolvency Event** means the Supplier or any Connected Person: (a) enters into any arrangement with its creditors in respect of debt; or (b) is the

subject of any process enforced against any part of its undertaking or assets; or (c) is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of sections 123, 267 or 268 of the Insolvency Act 1986 (as applicable); or (d) is the subject of winding-up, bankruptcy or any other similar proceedings; or (e) has a receiver, administrative receiver, manager, or administrator appointed over all or any part of its undertaking or assets; or (f) takes, suffers or is the subject of (or proposes to take or is threatened with) any similar or analogous action, event or proceedings in any jurisdiction; or (g) ceases, or threatens to cease, to carry on its business;

**Intellectual Property Rights** means any and all copyright, database rights, rights in designs, trade marks, domain names, goodwill or patents, rights in confidential information, and any other intellectual property or rights (including, where relevant, all extensions, reversions, revivals and renewals of the same), in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent property, rights or forms of protection which now, or will in the future, subsist in any part of the world;

**Key Personnel** means the individuals specified (if any) by the EIS on the Purchase Order to provide the Supplies;

**Losses** means any liabilities, losses and damage, claims, actions, demands, costs, charges and expenses of any nature whatsoever, including any legal fees or other costs incurred by a person pursuant to the Contract or otherwise;

**Materials** means all materials (in whatever form) including all artworks, items embodying, plans, concepts, embodiments or materials describing ideas, preliminary and final drafts, texts, drawings, sketches, performances, slides, photographs, negatives, videos, films, banners, signs, music, computer programming, software and multimedia materials and other associated materials, or other subject matter, created, developed or conceived by or on behalf of the Supplier or any Connected Person (and its and their Personnel) in connection with the provision of the Supplies and/or the performance of other obligations under the Contract, but excluding any materials or works wholly subsisting before the date of the Contract and developed independently of the Contract;

**Personnel** means, in relation to a person, any and all officials, officers, trustees, members, directors, employees, consultants, advisers, agents, representatives, clients, contractors and sub-contractors of such person;

**Price** means the price of the Supplies stated in the Purchase Order;

**Protective Measures** : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it.

**Purchase Order** means the document, incorporating these Terms, setting out the EIS’s order for Supplies (which document shall be valid only if issued on behalf of the EIS by a duly authorised person and bearing a valid purchase order number) and such attachments (if any) to the same as may be agreed in writing by the EIS;

**Service Credits** means any service credits specified in the Purchase Order or otherwise in the Contract;

**Service Levels** means those standards of performance (if any) specified in the Purchase Order or otherwise in the Contract to be achieved by the Supplier in providing the Supplies;

**Services** means any work or services (including any instalment or any part of them) that are specified in the Purchase Order or supplied in the course of performing obligations under the Contract;

**Specification** means the specification (if any) of the Supplies that is contained (or referred to) in the Purchase Order;

**Supplier** means the person that is to provide the Supplies under the Contract, as specified in the Purchase Order;

**Supplies** means the Goods and/or the Services;

**Terms** means these standard terms and conditions.

- 1.2 In the Contract, unless the context otherwise requires, any reference to:
- (a) a "term" is to a term of these Terms;
  - (b) "including" or any similar word shall not limit the generality of any preceding words;
  - (c) "parties" means the parties to the Contract, and any reference to "party" shall be construed accordingly;
  - (d) a "person" includes any individual, company, partnership, joint venture, association, organisation, trust, state or state agency or other similar entity (in each case whether or not having separate legal personality);
  - (e) "writing" or "written" means a communication in the form of writing which may be in electronic form or hard copy form;
  - (f) the singular includes the plural and vice versa, and use of any gender includes the other genders;
  - (g) headings shall be disregarded in the interpretation of the Contract;
  - (h) any document to which the Contract refers shall be construed as a reference to such document as amended, varied, supplemented, novated and/or replaced in any way from time to time (provided always that such amendment, variation, supplement, novation or replacement has been agreed by the EIS in accordance with these Terms); and
  - (i) a statute or statutory provision is a reference to that statute or statutory provision as amended, consolidated, replaced and/or re-enacted from time to time and includes any subordinate legislation from time to time in force made under it.
- 1.3 In the Contract, unless the context otherwise requires, an obligation imposed on the Supplier shall include an obligation on the Supplier to procure compliance by its Personnel and the Connected Persons (and their Personnel) with such obligation.

## 2 The Contract between the EIS and the Supplier

- 2.1 The Purchase Order including the Terms constitutes an offer by the EIS to purchase Supplies from the Supplier. That offer shall be accepted on the Supplier confirming its acceptance in writing or (if earlier) be deemed accepted on the Supplier providing (or beginning to provide) all or part of the Supplies, except that (unless otherwise notified by the EIS in writing) such offer shall lapse unless it is not so accepted or deemed accepted within 14 days after the date of such offer.
- 2.2 The Terms shall apply to all purchases of Supplies by the EIS and are deemed incorporated into the Contract to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier (except where explicitly referenced in the Purchase Order) notwithstanding any contrary provisions in any such terms and conditions, and the Supplier hereby waives any right that it otherwise might have to rely on any other such terms and conditions.
- 2.3 No variation of the Contract shall have effect unless expressly agreed in writing and signed by the duly authorised representatives of the EIS and the Supplier, and the EIS shall not be liable for any charges or costs relating to any changes to the Supplies or additional Supplies unless such changes are so agreed.

## 3 Delivery.

- 3.1 Time is of the essence for delivery of the Supplies and the performance by the Supplier of its obligations hereunder.
- 3.2 The EIS shall not be obliged to carry out any work to enable delivery of Supplies to take place.
- 3.3 Except where expressly agreed in writing to the contrary, the Supplier shall at its own cost provide all materials, parts, components and replacements and all computer programs needed to provide and/or operate the Supplies, and/or for the EIS to receive the benefit of the Supplies.
- 3.4 The EIS shall afford the Supplier such access to the Delivery Address and/or provide, without charge, such additional information, records and other materials in its possession as may reasonably be required by the Supplier to provide the Supplies.

3.5 The EIS shall not be deemed to have accepted the Supplies until it has notified the Supplier of its acceptance.

3.6 The Supplier shall on demand provide to the EIS any information relating to the Supplies requested by the EIS, in such form as is requested by the EIS. The Supplier shall give the EIS prior written notice of the delivery under the Contract of any element of the Supplies having a hazard to the health and safety of persons or property, identifying those hazards and giving full details of any precautions to be taken by the EIS on the delivery of such Supplies and thereafter. The Supplier shall give the EIS prior written notice of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of any Goods or other items supplied hereunder.

3.7 The Supplier must immediately notify the EIS in writing if it believes at any time that it is unlikely to be able to meet the Delivery Date or any Service Level. The notice must contain detailed reasons for the anticipated delay or failure and the Supplier's best estimate of the expected delay or achievable level of service. Notification will not relieve the Supplier from any of its obligations under the Contract. If the Supplier provides any such notification, and/or fails to achieve the provision of any Supplies or the performance of its obligations, by any Delivery Date, and/ or fails to meet any Service Level(s) then the Supplier shall arrange all such additional resources and do all acts and things (which may include engaging with third parties) to deliver the relevant Supplies or perform the relevant obligations, within such timescale as is specified by the EIS and at no additional cost to the EIS and shall inform the EIS on demand of such additional resource allocation made by it and/or any acts and things being carried out by it in order to remedy the relevant failure.

## 4 Price and payment

4.1 The Price shall, unless otherwise agreed in writing by the EIS, is specified and shall be paid in pounds sterling and exclusive of VAT, but inclusive of all other taxes, duties, costs and charges (including charges for packaging, packing, insurance and delivery). The EIS shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, in which event the Price shall be duly amended.

4.2 The EIS shall pay all invoices that are in the EIS's reasonable opinion valid, correct and compliant in all respects with the Contract and which relate to Supplies properly made in accordance with the Contract within 30 days of the date of receipt of the invoice (or such other period as the parties may agree in writing). No invoices shall be dated prior to their date of actual submission to the EIS. This obligation shall be subject to any withholding obligations imposed on the EIS by any authority having jurisdiction over the EIS and/or the Contract.

4.3 Invoices may be rendered only after the Supplies have been correctly delivered in accordance with the Contract. The Supplier must issue invoices which quote the respective Purchase Order number and which, if the Supplier is VAT-registered, are valid VAT invoices. Invoices must be addressed to EIS at EIS Finance, Manchester Institute of Health & Performance, 299 Alan Turing Way, Manchester M11 3BS.

4.4 If any undisputed sum under the Contract is not paid when due, then, as a substantial remedy for late payment, that sum shall bear simple interest from the due date until actual payment at 3% per annum over the base rate from time to time of the Bank of England. Should any sums be outstanding, the Supplier is not entitled to suspend deliveries of Supplies or the performance of any other obligation hereunder. No payment shall be made for rejected Supplies or Supplies which do not accord with the Contract.

4.5 The EIS may set off any amount it owes the Supplier under the Contract against any amount that the Supplier owes it under the Contract or under any other agreement or arrangement with it and/or against any amount of or claim for damages due to or made by the Supplier against the EIS whether under the Contract or in respect of any other matter, claim or thing. However, the Supplier must not set off any amount the EIS owes it under the Contract against any amount that it owes the EIS under the Contract or under any other agreement or arrangement with the EIS, or in respect of any other matter, claim or thing.

## 5 Quality

- 5.1 The Supplier warrants, represents and undertakes that the Supplies will:
- (a) be of satisfactory quality, design, material and workmanship;
  - (b) be fit for any purpose held out by the Supplier or made known to the Supplier by or on behalf of the EIS prior to or at the time when the Purchase Order was placed;

- (c) be free from defects and any third-party lien, charge, claim, title, interest or other encumbrance;
  - (d) conform in all respects with the Contract, and any sample(s) approved in writing by the EIS, the policies and procedures of the EIS, and all laws, orders, regulations and bye-laws that are applicable to the Supplies;
  - (e) be provided by the Key Personnel (if any);
  - (f) be provided in a proper and efficient manner with all due care, skill and diligence, in accordance with good industry practice and to such high standard of quality as it is reasonable for the EIS to expect in all the circumstances from a competent supplier experienced in providing supplies equivalent to the Supplies;
  - (g) not breach the Intellectual Property Rights of any person nor cause the EIS to breach the Intellectual Property Rights of any person; and
  - (h) not contain anything that is offensive or harmful.
- 5.2 The EIS's rights under the Contract are in addition to the statutory provisions implied in favour of the EIS by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982.

## 6 Intellectual property

- 6.1 The Supplier hereby unconditionally and irrevocably:
- (a) assigns (by way of present and future assignation) to the EIS absolutely, free from any liens, charges or encumbrances whatsoever, all right, title and interest (whether vested, contingent or future) in and to all Intellectual Property Rights in and/or relating to the Materials absolutely and throughout the world for the full period during which such Intellectual Property Rights subsist (including all renewals, revivals, reversions and extensions of the same) and thereafter (to the fullest extent possible) in perpetuity;
  - (b) to the extent that access to any Intellectual Property Rights other than those assigned to the EIS under term 6.1(a) are required for the EIS (or its nominees) to use or receive the benefit of the Supplies, grants to the EIS a royalty-free, non-exclusive and perpetual licence to access such Intellectual Property Rights, together with such right to sub-license, transfer, novate or assign such licence for such purposes as the EIS reasonably requires; and
  - (c) waives and undertakes not to assert and shall procure that all Connected Persons (and its and their Personnel) involved in the creation or production of the Materials shall (in writing) unconditionally and irrevocably waive and undertake not to assert, to the extent permitted by law, any moral rights or similar rights or other non-transferable rights that it or they may have in the Materials under any and all laws now or in future in force in any part of the world
- 6.2 The Supplier shall execute and do (and/or procure the execution and doing of) all such documents and all such acts as the EIS may reasonably require to give effect to this term 6.

## 7 Data protection

- 7.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, EIS is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is that confirmed to the Supplier in writing by EIS and may not be determined by the Supplier.
- 7.2 The Supplier shall notify EIS immediately if it considers that any of EIS's instructions infringe the Data Protection Legislation.
- 7.3 The Supplier shall provide all reasonable assistance to EIS in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of EIS, include: (a) a systematic description of the envisaged processing operations and the purpose of the processing; (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services; (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 7.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with EIS's written instructions, unless the Supplier is required to do otherwise by Law;
  - (b) ensure that it has in place Protective Measures, reviewed and approved by EIS as appropriate to protect against a Data Loss Event having taken

account of the: (i) nature of the data to be protected; (ii) harm that might result from a Data Loss Event; (iii) state of technological development; and (iv) cost of implementing any measures;

- (c) ensure that : (i) the Supplier Personnel do not process Personal Data except in accordance with this Contract; (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they: (A) are aware of and comply with the Supplier's duties under this clause; (B) are subject to appropriate confidentiality undertakings with the Supplier; (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by EIS or as otherwise permitted by this Contract; and (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of EIS has been obtained; and
- (e) at the written direction of EIS, delete or return Personal Data (and any copies of it) to EIS on termination of the Contract unless the Supplier is required by Law to retain the Personal Data.

7.5 Subject to clause 7.6, the Supplier shall notify EIS immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

7.6 The Supplier's obligation to notify under clause 7.5 shall include the provision of further information to EIS in phases, as details become available.

7.7 Taking into account the nature of the processing, the Supplier shall provide EIS with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 7.5 (and insofar as possible within the timescales reasonably required by EIS) including by promptly providing: (a) EIS with full details and copies of the complaint, communication or request; (b) such assistance as is reasonably requested by EIS to enable EIS to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; (c) EIS, at its request, with any Personal Data it holds in relation to a Data Subject; (d) assistance as requested by EIS following any Data Loss Event; (e) assistance as requested by EIS with respect to any request from the Information Commissioner's Office, or any consultation by EIS with the Information Commissioner's Office.

7.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 7. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) EIS determines that the processing is not occasional;
- (b) EIS determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) EIS determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

7.9 The Supplier shall allow for audits of its Data Processing activity by EIS or EIS's designated auditor.

7.10 Before allowing any subcontractor, who has been approved by EIS pursuant to clause 13.1 to process any Personal Data related to this Contract, the Supplier must:

- (a) notify EIS in writing of the intended processing by the approved subcontractor;
- (b) obtain the written consent of EIS;

- (c) enter into a written agreement with the Subcontractor which give effect to the terms set out in this clause 7 such that they apply to the Subcontractor; and
  - (d) provide EIS with such information regarding the Subcontractor and the processing as EIS may reasonably require.
- 7.11 EIS may, at any time on not less than 30 Business Days' notice, revise this clause 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 incorporated by attachment to this Contract).
- 7.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. EIS may on not less than 30 Business Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **8 Confidentiality and Freedom of Information**

- 8.1 Without prejudice to any confidentiality undertaking signed by or on behalf of the Supplier before the date of the Contract, the Supplier shall and shall procure all Connected Persons (and its and their Personnel) shall:
- (a) treat all Confidential Information as strictly confidential;
  - (b) not disclose any Confidential Information to any person except: (i) to other Connected Persons or Personnel (if bound by equivalent obligations of confidentiality) that reasonably need to know the same in connection with the performance of obligations under the Contract; or (ii) if required to be disclosed by applicable law or order of a court of competent jurisdiction; and
  - (c) not use Confidential Information for any purpose whatsoever other than to fulfil the Supplier's obligations under the Contract.
- 8.2 Upon termination of the Contract (or earlier if requested by the EIS), the Supplier shall ensure that all items or materials containing Confidential Information in the possession or control of the Supplier and/or the Connected Persons and/or its or their Personnel are destroyed or (at the EIS's option) returned to the EIS, and that all such Confidential Information stored electronically, digitally or magnetically is erased.
- 8.3 If requested by the EIS, the Supplier shall, and shall procure that each of the Connected Persons that has access to Confidential Information shall, execute a confidentiality undertaking in a form required by the EIS, and the Supplier shall promptly deliver each such executed undertaking to the EIS.
- 8.4 The EIS is subject to the Freedom of Information Act 2000 and the Supplier acknowledges that if the EIS receives a request under such Act which relates to any information of the Supplier, any Connected Person, or any of its (or their) Personnel, the EIS may (at its discretion) opt to disclose the information as it sees fit in the circumstances.
- 8.5 Neither Party shall issue any press release or other publicity material or make any representation in respect of the existence of the Contract or the subject matter thereof without the prior written consent of the other party. However, the restriction shall not apply to announcements or disclosures required by law except that such event the parties shall co-ordinate to the extent possible with respect to the wording of any such announcements.

## **9 Remedies of the EIS**

- 9.1 If the Supplier fails, in any material respect, to provide the Supplies (or any part of them) in accordance with any of the provisions of the Contract or otherwise to comply with the Contract, the EIS may, without prejudice to its other rights or remedies (and whether or not all or any part of the Supplies have been accepted by the EIS):
- (a) rescind the Contract (in whole or in part);
  - (b) reject the Supplies (in whole or in part) and, where possible, either: (i) return any Goods to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Supplies so returned (including the cost of any such return) shall be promptly paid by the Supplier, the EIS not being obliged to return to the Supplier any packaging or packing materials for such Goods; or (ii) require that the Supplier collect the Goods at the first available opportunity, and receive from the Supplier a refund of any sums paid therefor, failing which the EIS may dispose of them at its discretion and be reimbursed for any costs of such disposal by the Supplier;
  - (c) give the Supplier the opportunity, at the Supplier's expense, within 10 days after receipt of notice from the EIS either: (i) to remedy any remediable defect in the Supplies; or (ii) to deliver replacement Supplies and/or to carry out any other necessary work to ensure that the provisions of the Contract are fulfilled;

- (d) refuse to accept any further deliveries of the Supplies, without any liability to the Supplier;
- (e) recover from the Supplier any expenditure reasonably incurred by the EIS in obtaining the equivalent supplies in substitution from another supplier;
- (f) carry out at the Supplier's expense any work reasonably necessary to make the Supplies comply with the Contract; and/or
- (g) be reimbursed in full for all Losses incurred in consequence of the Supplier's breach of the Contract.

- 9.2 Any remedy under the Contract shall be without prejudice to any other right or remedy which has already accrued, or subsequently accrues, to the EIS, unless expressly agreed otherwise.

## **10 Liability**

- 10.1 The Supplier indemnifies and shall keep indemnified EIS against any Losses arising out of any breach by the Supplier of its obligations under and in terms of the Contract or from any act of negligence, omission, default or breach of statutory duty on the part of the Supplier, any Connected Person or its or their Personnel.
- 10.2 Nothing in the Contract shall limit or exclude any party's liability for fraud or for death or personal injury caused by negligence, or to the extent otherwise not permitted by law.
- 10.3 Notwithstanding any other provision of the Contract, but subject to term 10.2 above, neither party shall have any liability to the other party arising out of or in connection with the Contract for any indirect, secondary or consequential Losses.
- 10.4 Subject to term 10.2 the EIS's total liability to the Supplier in respect of all Losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price paid under the Contract.

## **11 Termination and cancellation**

- 11.1 The Contract shall automatically terminate on: (a) the completion of the final delivery of Supplies ordered under it; or (b) on such date as the parties may agree in writing, whichever is the earlier.
- 11.2 The EIS may, without prejudice to its other rights or remedies, terminate the Contract with immediate effect without incurring any liability to the Supplier by giving notice to the Supplier at any time:
- (a) if the Supplier commits a material breach of the Contract and (if such breach is capable of remedy) fails to remedy the breach within 7 days (or such other period as the EIS may reasonably specify in the circumstances) after receiving the EIS's request in writing to do so;
  - (b) if the Supplier commits repeated breaches (not being individually material) of the Contract, the cumulative effect of which constitutes a material breach and/or is sufficient to justify the reasonable inference that the Supplier would continue to deliver a sub-standard service in relation to a material provision of the Contract;
  - (c) if the Supplier suffers an Insolvency Event.
- 11.3 The EIS, for any reason, may without liability to the Supplier cancel a Purchase Order in respect of all or part only of the Supplies at any time by giving the Supplier prior notice.
- 11.4 The EIS may terminate the Contract or the supply of all or part of the Supplies, defer the date of delivery thereof and/or payment in respect thereof, and/or reduce the volume or scale of any Supplies ordered if the Supplier's performance of the Contract is prevented or delayed for more than 7 days due to acts, events, omissions or accidents which are beyond the reasonable control of either party.
- 11.5 Following either: (i) termination of the Contract; or (ii) the supply of all or any part of the Supplies as set out in term 11.3:
- (a) the EIS may, at the Supplier's risk and expense, return any Goods which have been delivered, on the basis that a full refund for Goods so returned shall promptly be paid by the Supplier;
  - (b) the EIS's sole liability in respect of the Supplies shall be to pay to the Supplier a fair and reasonable price for all Supplies provided to the satisfaction of the EIS before the date termination, provided

that the Supplier submits a valid invoice for such price within 60 days after such date; and

- (c) the Supplier shall deliver up to the EIS, or otherwise dispose of at the EIS's direction, all Confidential Information, Materials and any other EIS Property (including data) in the possession or under the control of the Supplier, any Connected Person, or its or their Personnel.

11.6 In the event of a termination of the Contract in accordance with terms 11.2, the Supplier shall not be entitled to any payment for the Supplies and the EIS shall have the right to reclaim any monies already paid by the EIS to the Supplier for the Supplies.

11.7 Termination of the Contract for whatever reason shall not affect either party's rights or remedies that have accrued prior to the date of termination, nor the coming into force or the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force by or after expiry or termination, including terms 5, 6, 7, 8, 9, 10, 13, 12 and 13..

## 12 Notices

12.1 Any notice to be given under the Contract shall be in writing, in English and signed by or on behalf of the party giving it and shall be served by hand or registered post (or, if posted to or from the United Kingdom, an internationally recognised courier service) to:

- (a) in the case of the Supplier, the Supplier's address specified on the Purchase Order;
- (b) in the case of the EIS, its registered office (marked for the urgent attention of the EIS's Director of Business and Finance); or
- (c) such other address as the recipient may designate in accordance with this term.

12.2 A notice shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery; and
- (b) if sent by registered post, 48 hours after posting (or, if sent by an internationally recognised courier service, 48 hours from the date of delivery to the courier service);

provided that, where receipt occurs outside Business Hours, notice shall be deemed to have been received at the start of Business Hours on the next following Business Day.

## 13 General Conditions

13.1 The Supplier may not, without the EIS's prior written approval, assign, novate, transfer, sublicense, subcontract, charge or otherwise deal in the Contract or any of its rights or obligations arising pursuant to the Contract (in whole or in part). Where any such approval is granted the Supplier shall remain liable to the EIS for the performance of all obligations (except for the EIS's) under the Contract. Nothing in the Contract shall restrict the EIS from assigning, novating, transferring, sublicensing, subcontracting, charging or otherwise dealing in the Contract or its rights or obligations under it (in whole or in part) as it sees fit in its sole discretion from time to time.

13.2 The Contract contains the entire agreement of the parties in relation to the subject matter hereof. Each party acknowledges that, in entering into the Contract, it is not relying on any representation or other assurance except as expressly set out or referred to in the Contract, provided that nothing in the Contract shall limit or exclude any liability for fraud.

13.3 No breach of any provision of the Contract shall be waived or discharged except with the express written consent of the parties. No failure to exercise or delay in exercising any right or remedy under the Contract shall operate as a waiver of that or any other right or remedy.

13.4 If a provision of the Contract is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), such provision shall be deemed severed, and the legality, validity and enforceability of the remainder of the Contract shall not be affected.

13.5 Nothing in the Contract constitutes a partnership, relationship of agency or contract of employment between the parties.

13.6 The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representatives of the parties.

13.7 Neither the Supplier nor the EIS shall be liable for failure to perform its obligations under the Contract if such failure results from any acts or events beyond its reasonable control including but not limited to

governmental actions, war, fire, flood or any disaster or industrial dispute, but excluding, in the case of the Supplier, any materials shortages, shortages of Personnel of it or any Connected Person, any industrial dispute relating to the Supplier or any Connected Person, any delay or failure in the Supplier's supply chain or any difficulties Supplier may have with its financing..

13.8 The Supplier shall not offer or give, or agree to give, to any employee or representative of the EIS any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other agreement with the EIS or for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

## 14 Dispute Resolution

The parties shall use reasonable endeavours to resolve any dispute or claim arising in connection with the Contract (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of the Contract or the consequences of non-existence or invalidity of the Contract) ("**Dispute**") by prompt discussion in good faith at a managerial level appropriate to the Dispute. Such discussion shall not be a pre-condition to the commencement of legal proceedings before any court. Unless the Contract has already been terminated, the parties shall continue to perform their obligations under the Contract regardless of the nature of the Dispute.

## 15 Governing Law

The Contract and any non-contractual obligations arising out of or in connection with the Contract and any Dispute shall be governed by, and construed in accordance with, the law of England. Each party irrevocably submits for all purposes in connection with the Contract any Dispute to the exclusive jurisdiction of the courts of England.