



**1. Definitions**

**1.1** “**ACCEPTANCE DATE**” has the meaning given to it in Clause 6.1.

**1.2** “**AFFILIATE**” means, in relation to any party, any other entity which, directly or indirectly, controls, is controlled by, or is under common control with, such party. For the purposes of this definition, control shall mean the right to exercise at least fifty per cent (50%) of the voting rights of an entity, or the right to appoint the majority of the directors to the board.

**1.3** “**CLIENT**” means any client or customer (in any jurisdiction), to whom any member of COMPANY GROUP is engaged in selling, renting, lending or otherwise supplying goods and/or performing services.

**1.4** “**CLIENT GROUP**” means any CLIENT, its CO-VENTURERS, its and their respective AFFILIATES, and its and their respective directors, officers and employees (including agency personnel).

**1.5** “**COMPANY**” means the relevant H&P legal entity or entities named in the CONTRACT or PURCHASE ORDER and shall include the COMPANY's legal personal representatives, successors and assigns.

**1.6** “**COMPANY GROUP**” means the COMPANY, its AFFILIATES, any joint venture partners of the foregoing and their AFFILIATES, and its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the CONTRACTOR GROUP.

**1.7** “**CONTRACT**” means the contract formed by the acceptance of the PURCHASE ORDER which incorporates these SUPPLIER TERMS AND CONDITIONS either by reference or inclusion.

**1.8** “**CONTRACTOR**” means the person, persons, firm or company named in the PURCHASE ORDER to supply GOODS and/or WORK, hereinafter defined, to the COMPANY and shall include the CONTRACTOR's legal personal representatives, successors and assigns.

**1.9** “**CONTRACTOR GROUP**” means the CONTRACTOR, its SUBCONTRACTORS, its and their AFFILIATES, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the COMPANY GROUP.

**1.10** “**CO-VENTURER**” means any other entity with whom the CLIENT is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations for which the GOODS and/or WORK are being provided and the successors in interest of such CO-VENTURER or the assignees of any interest of such CO-VENTURER.

**1.11** “**DELIVERY DATE**” means the date(s) upon which the GOODS and/or WORK shall be delivered as specified in the PURCHASE ORDER.

**1.12** “**EFFECTIVE DATE**” means the date of last signature of the CONTRACT.

**1.13** “**GOODS**” means the goods, if any, to be provided in accordance with the CONTRACT.

**1.14** “**GROSS NEGLIGENCE**” means an extremely careless act or omission significantly beyond the standards of carelessness which would amount to simple negligence and which is in wanton or reckless disregard for harmful, avoidable and foreseeable consequences.

**1.15** “**INTELLECTUAL PROPERTY RIGHTS**” means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, 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.



**1.16 SUPPLIER TERMS AND CONDITIONS**" means these terms and conditions which may be amended from time to time.

**1.17 "PARTY" or "PARTIES"** means the parties to the CONTRACT.

**1.18 "PURCHASE ORDER"** means the purchase order between the PARTIES identifying the GOODS and/or WORK to be provided by the CONTRACTOR.

**1.19 "SUBCONTRACT"** means any contract between the CONTRACTOR and any party (other than the COMPANY or any employees (including agency personnel) of CONTRACTOR) for the performance of any part of the WORK.

**1.20 "SUBCONTRACTOR"** means any party (other than the CONTRACTOR) to a SUBCONTRACT.

**1.21 "VAT"** means value added tax or any similar sales tax or duty applicable in any jurisdiction.

**1.22 "WILFUL MISCONDUCT"** means any act or failure to act which was intended to cause specific harmful, avoidable and foreseeable consequences.

**1.23 "WORK"** means work the CONTRACTOR is required to carry out in accordance with the CONTRACT, including the provision of all materials, services and equipment to be rendered in accordance with the CONTRACT.

## **2. Interpretation**

**2.1** All instructions, notices, agreements, authorisations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.

Nevertheless, if for any reason it is considered necessary by the COMPANY to give an instruction to the CONTRACTOR orally in the first instance, the CONTRACTOR shall comply with such instruction. Any such oral instruction shall be confirmed in writing by COMPANY as soon as is reasonably practicable under the circumstances.

**2.2** Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

**2.3** Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa.

**2.4** If there is any inconsistency, ambiguity or discrepancy contained within this CONTRACT, then the clause benefitting the COMPANY GROUP will prevail.

## **3. Invalidity and Severability**

**3.1** If any provision of the CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the CONTRACT and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The COMPANY and the CONTRACTOR agree to attempt to substitute, for any such invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

## **4. Terms**

**4.1** The terms and conditions of the CONTRACT shall, to the fullest extent permitted by law, apply to the exclusion of all other terms and conditions including, without limitation, any terms and conditions of the CONTRACTOR or those which are implied by trade, custom, practice or course of dealing. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce 2020



("INCOTERMS® 2020") are expressly excluded unless specified otherwise in the CONTRACT, in which case any such provision of INCOTERMS® 2020 so specified in the CONTRACT shall be deemed to form part of the CONTRACT.

4.2 This CONTRACT constitutes the entire agreement between the PARTIES hereto with respect to the GOODS and/or WORK and supersedes all prior negotiations, statement, representations, promises, assurances, warranties, understandings or agreements related to the CONTRACT, whether written or oral. Each party acknowledges that in entering into this CONTRACT it does not rely on, and shall have no remedies in respect of, any statement, representation, promise, assurance, warranty (whether made innocently or negligently), understanding, or agreement that is not set out in this CONTRACT. No amendments to the CONTRACT shall be effective unless evidenced in writing and signed by the PARTIES.

## **5. Delivery**

5.1 The CONTRACTOR will deliver or make the GOODS available to the COMPANY at the place specified in the CONTRACT on the DELIVERY DATE.

5.2 The CONTRACTOR shall carry out the WORK in accordance with the timescales specified by the COMPANY in the CONTRACT or, failing such specification, promptly, using, in either case, best endeavours to ensure that the performance and completion of the WORK are not delayed or impeded.

5.3 Time of delivery and performance under this Clause 5 is of the essence.

5.4 In the event that the CONTRACTOR is unable to deliver the GOODS on the DELIVERY DATE or execute the WORK when due the CONTRACTOR shall notify the COMPANY at the earliest possible opportunity. The COMPANY and the CONTRACTOR shall endeavour to agree a mutually acceptable revised time scale. However, in the event that the COMPANY and the CONTRACTOR cannot agree, the COMPANY shall have the right to terminate the CONTRACT and recover from the CONTRACTOR the losses sustained and any costs incurred as a result of the delay.

## **6. Acceptance**

6.1 The ACCEPTANCE DATE shall be the date when a duly authorised employee or representative of the COMPANY accepts in writing the GOODS and/or the WORK performed, delivered or collected, and where such GOODS and/or the WORK are not defective or damaged in any way and comply with the CONTRACT, including without limit Clause 16 (Warranty). In the event that a defect in or damage to the GOODS and/or the WORK, or any breach of the CONTRACT is identified by the COMPANY, it shall be deemed not to have accepted the GOODS and/or the WORK, if and until such time as such defect, damage or breach is remedied by the CONTRACTOR in accordance with Clause 19 (Examination and Defects Correction).

6.2 Subject to Clause 6.1 above, such acceptance shall be within a reasonable time of performance, delivery or collection, but shall be without prejudice to the CONTRACTOR's liability for any defect in or damage to the GOODS and/or the WORK, or any breach of the CONTRACT which is not identified by such duly authorised employee or representative of the COMPANY at the time of acceptance.

## **7. Inclusive Price**

7.1 The price which the COMPANY has agreed to pay for the GOODS and/or the WORK, is set out in the PURCHASE ORDER and is exclusive of any applicable VAT but includes all other taxes, duties or other charges as applicable, and is not subject to change throughout the term of the PURCHASE ORDER in the absence of COMPANY's express prior written consent.

## **8. Access**

8.1 The CONTRACTOR will allow the COMPANY to expedite, inspect and test the GOODS during manufacture at the CONTRACTOR's premises or to expedite, inspect and test provision of the WORK on reasonable prior



notice. Any expediting, inspection, testing or any failure to do so shall in no way relieve the CONTRACTOR of its obligations as specified in the CONTRACT.

**9. Packing**

- 9.1 The CONTRACTOR shall ensure that the GOODS are properly packed and secured in such a manner as to enable them to reach their destination in good condition.
- 9.2 Without prejudice to Clause 9.1 above, the CONTRACTOR will adhere to and comply with all instructions given by the COMPANY in the appropriate PURCHASE ORDER relating to packing, labelling and/or handling.

**10. Documentation**

- 10.1 The CONTRACTOR will provide to the COMPANY within the agreed timetable, all drawings, certificates or other documentation in the specified format and quantities, in each case as detailed in the CONTRACT.

**11. Hazardous Materials**

- 11.1 To the extent the GOODS and/or WORK provided by the CONTRACTOR under the CONTRACT contain toxic, corrosive or hazardous materials, the CONTRACTOR will ensure that the GOODS and/or the WORK comply with the requirements of all applicable laws and that a notice accompanies each consignment, together with appropriate care and handling instructions. GOODS and/or the WORK, supplied under the CONTRACT, which are contaminated beyond use, at the time of delivery, shall be regenerated or disposed of by the CONTRACTOR. The title and risk of such contaminated GOODS and/or the WORK, will remain with the CONTRACTOR, who will bear all expenses for the said processes.

**12. Spares**

- 12.1 The CONTRACTOR shall give sufficient notice to the COMPANY of its intention to cease supply of component parts or replacements, to enable the COMPANY to purchase such component parts or replacements.

**13. Title and Risk**

- 13.1 The COMPANY will be responsible for risk of loss or damage to the GOODS and/or WORK with effect from the ACCEPTANCE DATE of the GOODS and/or WORK.
- 13.2 Title in and to the GOODS and/or WORK shall pass from CONTRACTOR to COMPANY on the earlier of (i) payment or part payment or (ii) the ACCEPTANCE DATE.

**14. Contractor's General Obligations**

- 14.1 The CONTRACTOR shall provide the WORK, including but not limited to all management, supervision, personnel, materials and equipment (except materials and equipment specified to be provided by the COMPANY), plant, consumables, facilities and all other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the CONTRACT.
- 14.2 CONTRACTOR shall comply with and strictly adhere to the COMPANY's instructions and directions on all matters relating to the WORK except to the extent that compliance with such instructions or directions is legally or physically impossible or creates a hazard to safety.
- 14.3 The COMPANY reserves the right to enter into other contracts associated with the WORK. The CONTRACTOR shall afford the COMPANY and other contractors of the COMPANY reasonable access and opportunity to permit performance of their work or contracts and shall co-operate fully with such parties.



14.4 The CONTRACTOR shall be responsible for the programming of the WORK.

**15. Contractor to Inform Itself**

15.1 The CONTRACTOR shall be deemed to have satisfied itself, before entering into the CONTRACT, as to the extent and nature of the WORK including but not limited to the services, personnel, materials and equipment, plant, consumables and facilities required for the WORK, the correctness and sufficiency of the rates and prices, general and local conditions, and all other matters which could affect progress of performance of the WORK.

15.2 Any failure by the CONTRACTOR to take account of matters which affect the WORK will not relieve the CONTRACTOR from its obligations under the CONTRACT.

**16. Warranty**

16.1 The CONTRACTOR irrevocably represents, warrants and guarantees that the GOODS and/or any materials and equipment or spares provided in the course of the WORK will be free from any claims of any nature, free from any defects, fit for their purpose, be of new, merchantable, and satisfactory quality, and be provided in accordance with the CONTRACT.

16.2 The CONTRACTOR irrevocably represents, warrants and guarantees that the WORK is executed in accordance with the COMPANY's requirements, with all due care and diligence, with the skill to be expected of a reputable contractor experienced in the types of work to be carried out hereunder, free from defects, and in accordance with the provisions of the CONTRACT.

16.3 CONTRACTOR shall ensure that the provisions of this Clause 16 are contained in any SUBCONTRACT.

**17. Assignment and Subcontracting**

**17.1 Assignment**

(a) The COMPANY shall be entitled to sub-contract, assign, or transfer the CONTRACT or any part of its respective rights or obligations under the CONTRACT to any other party.

(b) The CONTRACTOR shall assign neither the CONTRACT nor any part of it nor any benefit or interest in or under it without the prior written approval of the COMPANY.

**17.2 Subcontracting**

(a) The CONTRACTOR shall not subcontract the whole of the WORK. The CONTRACTOR shall not subcontract any part of the WORK without the prior written approval of the COMPANY.

(b) No SUBCONTRACT shall bind or purport to bind the COMPANY or the CO-VENTURERS. Nevertheless, the CONTRACTOR shall ensure that any SUBCONTRACTOR shall be bound by and observe the provisions of the CONTRACT in so far as they apply to the SUBCONTRACT.

Each SUBCONTRACT shall expressly provide for the CONTRACTOR's unconditional right of assignment of the SUBCONTRACT to the COMPANY in the event that the COMPANY terminates the CONTRACT and wishes to have the SUBCONTRACT survive termination and be assigned to it.

(c) The CONTRACTOR shall be responsible for all work, acts, omissions and defaults of any SUBCONTRACTOR as fully as if they were work, acts, omissions or defaults of the CONTRACTOR.

(d) The CONTRACTOR shall be responsible for and shall indemnify, defend and hold harmless the COMPANY GROUP and CLIENT GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of any claims brought by its SUBCONTRACTORS directly against any member of COMPANY GROUP and CLIENT GROUP.



**18. Contractor Personnel**

- 18.1 The CONTRACTOR undertakes to provide sufficient personnel at all times to ensure performance and completion of the WORK in accordance with the provisions of the CONTRACT.
- 18.2 All personnel employed or supplied by CONTRACTOR for the WORK shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with good industry practice. The CONTRACTOR shall verify all relevant qualifications of such personnel.
- 18.3 Where key personnel of the CONTRACTOR are specified in the CONTRACT they shall not be replaced without the prior approval of the COMPANY. Any replacement shall work with the person to be replaced for a reasonable handover period.
- 18.4 The CONTRACTOR shall ensure that such key personnel and supervisory personnel of the CONTRACTOR and SUBCONTRACTORS shall read, write and speak fluent English.
- 18.5 The CONTRACTOR shall make its own arrangements for the engagement of personnel, local or otherwise, and, save in so far as the CONTRACT otherwise provides, for their payment and onshore transport, housing, maintenance and board and lodging.
- 18.6 The CONTRACTOR shall be responsible for any WORK performed by any agency personnel and by any other person provided by the CONTRACTOR in connection with the WORK as if the WORK was performed by the employees of the CONTRACTOR.
- 18.7 The CONTRACTOR shall ensure that all employees of the CONTRACTOR and any SUBCONTRACTOR engaged in the performance of the WORK comply with applicable laws including immigration laws and where required are in possession of a valid work permit for the duration of the CONTRACT. When requested details of such work permits shall be submitted to the COMPANY prior to the employee being engaged in the WORK.
- 18.8 The COMPANY may instruct the CONTRACTOR to remove from the worksite any person engaged in any part of the WORK who in the opinion of the COMPANY is either:
  - (a) incompetent or negligent in the performance of his duties; or
  - (b) engaged in activities which are contrary or detrimental to the interests of the COMPANY; or
  - (c) not conforming with relevant health, safety and environment (HS&E) procedures or persists in any conduct likely to be prejudicial to safety, health and environment.

Any such person shall be removed forthwith from the worksite. Any person removed for any of the above reasons shall not be engaged again in the WORK or on any other work of the COMPANY without the prior approval of the COMPANY.

The CONTRACTOR shall provide a suitable replacement for any such person within twenty four (24) hours or such longer time as may be agreed by the COMPANY.

**19. Examination and Defects Correction**

**Examination**

- 19.1 In order to confirm that the requirements of the CONTRACT are met the COMPANY shall have the right but not the obligation, at all times before delivery of the GOODS and/or during the performance of the WORK to examine the GOODS and/or WORK and all documentation relating thereto, and to reject any item which does not comply with the requirements of the CONTRACT.



19.2 Neither failure on the part of the COMPANY or others to inspect the GOODS and/or WORK or witness or test or to discover defects nor failure to reject GOODS and/or WORK performed which is not in accordance with the CONTRACT shall relieve the CONTRACTOR from any liability or obligation under the CONTRACT.

#### **Defects Correction**

19.3 If the COMPANY notifies CONTRACTOR of any breach of warranty under Clause 16.1, the CONTRACTOR will promptly repair, replace or rectify any of the GOODS (or any replacement). The CONTRACTOR's obligation to remedy such breach of warranty so notified by COMPANY shall cease twenty-four (24) months from acceptance of the GOODS. Title and risk in the GOODS, or any part thereof, which do not comply with the requirements of the CONTRACT and which are rejected by the COMPANY shall re-vest in the CONTRACTOR on return to the CONTRACTOR.

19.4 If the COMPANY notifies CONTRACTOR of any breach of warranty under Clause 16.2, the CONTRACTOR shall, at its own expense, promptly carry out all work required to correct any defects in the WORK. The CONTRACTOR's obligation to remedy such breach of warranty so notified by COMPANY shall cease twenty-four (24) months from the date on which the relevant part of the WORK was accepted.

19.5 In the event that any of the GOODS are repaired, replaced or rectified and/or the WORK is reperformed, rectified or replaced by the CONTRACTOR under the provisions of this Clause 19, the foregoing warranty and obligation to correct any defects in response to a claim for breach of warranty shall apply in respect of such GOODS and/or WORK for twenty-four (24) months from the date on which the repair, replace or rectification (in relation to GOODS) and/or reperformance, rectification or replacement (in relation to WORK) was accepted.

19.6 The COMPANY may decide that the carrying out by the CONTRACTOR of work necessary to correct warranty breach of Clause 16 (Warranty) will be prejudicial to its interests. In such cases the COMPANY may undertake the CONTRACTOR's responsibilities described above. The COMPANY shall notify the CONTRACTOR in such cases and shall be entitled to recover from the CONTRACTOR all additional costs reasonably incurred by the COMPANY as a direct result of carrying out such responsibilities.

#### **20. Variations**

20.1 COMPANY shall be entitled to make variations to any aspect of the CONTRACT upon written notice to CONTRACTOR and CONTRACTOR will commence implementation of the variation upon receipt of such written notice. If such a variation causes a change in the cost to CONTRACTOR for performing the CONTRACT or a change to the delivery schedule, CONTRACTOR will have fourteen (14) days to submit a reasonable claim for adjustment to the price or delivery schedule hereunder. Such adjustment shall be subject to the formal written agreement of COMPANY. CONTRACTOR will be deemed to have waived any right to such adjustment if such a claim is not received by COMPANY in fourteen (14) days.

#### **21. Force Majeure**

21.1 Neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause 21 and which is beyond the control and without the fault or negligence of the PARTY affected and which, by the exercise of reasonable diligence, the said PARTY is unable to provide against.

21.2 For the purposes of the CONTRACT only the following occurrences shall be force majeure ('force majeure occurrence'):

(a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;



(b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

(d) Earthquake, flood, fire, explosion, volcanic ash and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;

(e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected PARTY its sub-contractors or its suppliers and which affect a substantial or essential portion of the GOODS and/or WORK;

(f) Maritime or aviation disasters;

(g) Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

21.3 Save as otherwise expressly provided in this CONTRACT, no payment of whatever nature shall be made in respect of or during a force majeure occurrence. If any force majeure occurrence delaying either PARTY lasts more than thirty (30) days, COMPANY may terminate the CONTRACT without penalty or further liability to CONTRACTOR and with immediate effect by written notice to CONTRACTOR.

**22. Suspension**

22.1 The COMPANY shall have the right, by notice to the CONTRACTOR, to suspend the delivery of GOODS and/or WORK or any part thereof to the extent detailed in the notice, for any of the following reasons:

(a) subject only to Clause 22.3, in the event of some default on the part of the CONTRACTOR or any SUBCONTRACTOR; or

(b) in the event that suspension is necessary for the proper execution or safety of the WORK or persons; or

(c) to suit the convenience of the COMPANY.

22.2 Upon receipt of such notice, the CONTRACTOR shall, unless instructed otherwise;

(a) suspend the delivery of the GOODS or part of the GOODS or discontinue the WORK or part of the WORK detailed in the notice, on the date and to the extent specified, and

(b) properly protect and secure the GOODS and/or WORK as required by the COMPANY.

22.3 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of a notice to suspend delivery of the GOODS and/or performance of the WORK or any part thereof, the COMPANY shall give notice of default to the CONTRACTOR giving details of such default. If the CONTRACTOR, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of suspension in accordance with the provisions of Clause 22.1.

22.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR or SUBCONTRACTOR (in which case no additional sums will be payable to the CONTRACTOR during the period of suspension), and in the event such a suspension causes a change in the cost to CONTRACTOR for performing the CONTRACT, the CONTRACTOR will have fourteen (14) days from the commencement of the suspension to submit a claim to the COMPANY for adjustment to the price hereunder (which clearly identifies how the suspension has caused an increase in the costs incurred by the CONTRACTOR in performing the CONTRACT). The COMPANY shall have complete discretion to determine the claims for price adjustment



which are made by the CONTRACTOR as the COMPANY at its sole discretion deems appropriate. CONTRACTOR will be deemed to have waived any right to such adjustment if such a claim is not received by COMPANY within fourteen (14) days of the commencement of the suspension.

- 22.5 If suspension results from default on the part of the CONTRACTOR or SUBCONTRACTOR, any additional costs reasonably incurred by the COMPANY as a direct result shall be recoverable on demand by the COMPANY from CONTRACTOR.
- 22.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the delivery of the GOODS and/or WORK to the extent specified.
- 22.7 In the event of any suspension, the COMPANY and the CONTRACTOR shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.
- 22.8 If the period of any suspension not arising as a result of default on the part of the CONTRACTOR exceeds thirty (30) days, the CONTRACTOR may serve a notice on the COMPANY requiring permission within fourteen (14) days from receipt of such notice to proceed with the delivery of the GOODS or part thereof or performance of the WORK or part thereof subject to suspension. If within said fourteen (14) days the COMPANY does not grant such permission the CONTRACTOR, by a further notice, may (but is not bound to) elect to treat the suspension as either:
  - (a) where it affects only part of the GOODS and/or WORK, an omission of such part under Clause 20 (Variations); or
  - (b) where it affects the whole of the WORK, termination in accordance with Clause 25.1 (Termination).

### **23. Terms of Payment**

- 23.1 For the performance and completion of the WORK, the COMPANY will pay for the GOODS and/or the WORK against the CONTRACTOR's correctly prepared invoice in the amounts specified in the CONTRACT within forty-five (45) days of receipt of the CONTRACTOR's invoice, the receipt not being earlier than the ACCEPTANCE DATE unless otherwise stated in the CONTRACT.

Following completion of the whole of the WORK, the CONTRACTOR shall not be entitled to receive any payment on any invoice received by the COMPANY after 120 days as the latest time for receipt of invoices. Nevertheless the COMPANY may, at its sole discretion, make payment against any such invoice

- 23.2 If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the CONTRACTOR of the reasons and request the CONTRACTOR to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the COMPANY shall be obliged to pay the undisputed part of a disputed invoice.
- 23.3 On settlement of any dispute, the CONTRACTOR shall submit an invoice for sums due and upon receipt of correct invoice the COMPANY shall make the appropriate payment within forty-five (45) days of receipt thereof.
- 23.4 Interest shall be payable for late payment of correctly prepared and supported invoices. The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus the annual percentage stated in the CONTRACT and shall be calculated pro rata on a daily basis. In the absence of such percentage, the amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus one percent (1%) per annum and shall be calculated pro rata on a daily basis and on the basis of 365 days a year. Interest shall run from the date on which the sum in question becomes due for payment in accordance with the provisions of Clause 23.1 until the date on which actual payment is made. Any such interest to be claimed by the CONTRACTOR shall be invoiced separately and within ten (10) working days of payment of the invoice to which the interest relates. Payment of the invoice claiming interest shall be in accordance with the provisions of Clause 23 hereof.



23.5 Without prejudice to any other right or remedy of COMPANY, COMPANY reserves the right to deduct, withhold or set off any amount from CONTRACTOR GROUP any amount owing to any member of COMPANY GROUP at any time by any member of CONTRACTOR GROUP against any amount payable by COMPANY to CONTRACTOR under the CONTRACT.

23.6 All payments contemplated under the CONTRACT are exclusive of applicable VAT, which shall be charged by and accounted to the relevant tax authority by the relevant PARTY as is required under the prevailing VAT legislation. Furthermore, the CONTRACTOR will comply with all applicable invoicing requirements of the COMPANY regarding the charging and accounting of VAT.

23.7 Payments by COMPANY to CONTRACTOR shall only be made by cheque or wire transfer to a bank account of CONTRACTOR, details of which shall be given to COMPANY in writing. Such notification shall be deemed to constitute a representation and warranty that the bank account so notified is owned and controlled solely by CONTRACTOR and no person other than CONTRACTOR has ownership of or interest in such account.

**24. Taxes and Customs Procedures**

**Taxes and Tax Exemption Certificates**

24.1 The CONTRACTOR shall, in accordance with the provisions of Clause 34 (Laws and Language) be responsible for:

(a) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which the CONTRACTOR is liable as imposed by any appropriate governmental authority or any other organization whose decrees have the force of law (hereinafter in this Clause 24 and in Clause 31 and Clause 34 referred to as "governmental authority") whether of the United Kingdom or elsewhere, whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the CONTRACTOR; and

(b) the payment of all taxes, duties, levies and charges and contributions (and any interest or penalties thereon) including but not limited to income, profits, corporation taxes and taxes on capital gains, turnover and added value taxes for which the CONTRACTOR is liable, whether arising in the United Kingdom, its territorial waters, its continental shelf or elsewhere, now or hereafter levied or imposed by any appropriate governmental authority whether of the United Kingdom or elsewhere, arising from this CONTRACT; and

(c) compliance with all statutory obligations to make deductions on account of tax and remit the required amounts to any appropriate governmental authority whether of the United Kingdom or elsewhere, including, but not limited to income tax, PAYE, national insurance, employee taxes, charges, social security costs, levies and contributions whether or not they are measured by the wages, salaries or other remuneration or benefits paid to persons employed by the CONTRACTOR, or persons providing services in connection with the CONTRACT to the CONTRACTOR, and the imposition of a similar obligation upon all SUBCONTRACTORS or any other persons employed by them or providing services to them in connection with the CONTRACT; and

(d) ensuring that any SUBCONTRACTOR or any other person employed, or providing services on or in connection with the CONTRACT shall comply with this Clause.

24.2 Notwithstanding anything else herein contained and taking into account the laws of the country where the GOODS are being provided and/or WORK is being performed, the CONTRACTOR agrees that it shall be responsible for payment of all taxes properly payable by it, including but not limited to withholding taxes and the CONTRACTOR further acknowledges that the COMPANY may, if statutorily obligated, remit payment of such taxes directly to the applicable taxing authority for the payment due to the CONTRACTOR. The COMPANY shall if so required provide to the CONTRACTOR receipts of such payments in the name of the CONTRACTOR within such period as may be reasonable in the circumstances, of such payments being made to the applicable taxing authority.



24.3 The CONTRACTOR shall supply to the COMPANY all such information, in connection with activities under the CONTRACT, as is necessary to enable the COMPANY to comply with the lawful demands for such information by any appropriate governmental authority whether of the United Kingdom or elsewhere.

24.4 Where the CONTRACTOR, any SUBCONTRACTOR or any other person employed by them, or providing services to them on or in connection with the CONTRACT, is or may become liable for tax as a result of the operation of Part 7A of the Taxes Management Act 1970 and/or Section 1013 of the Income Tax Act 2007 and/or Section 1313 of the Corporation Tax Act 2009 and/or Section 1170 of the Corporation Tax Act 2010 and/or Section 276 of the Taxation of Chargeable Gains Act 1992 or, in each case, any amending legislation, and if such a person, within forty five (45) days of the EFFECTIVE DATE of the CONTRACT, is not able to exhibit to reasonable satisfaction of the COMPANY that the person is "resident" for tax purposes within the United Kingdom, the CONTRACTOR shall, where the WORK or any part thereof is to be performed within the United Kingdom and/or within a "designated area", obtain for itself and procure that any such SUBCONTRACTOR or other person employed by them, or providing services to them on or in connection with the CONTRACT, obtains an exemption certificate from an officer of HM Revenue and Customs in favour of the COMPANY in accordance with Section 77F of the Taxes Management Act 1970 and any amendment thereto. The CONTRACTOR shall immediately upon receipt thereof, forward such certificate to the COMPANY or where such certificate is refused, the CONTRACTOR shall upon being so informed, immediately notify the COMPANY of such refusal. If the person ceases to be so resident or such exemption certificate is cancelled the CONTRACTOR shall immediately advise the COMPANY of such an event.

If such exemption certificate is not obtained within forty five (45) days of the EFFECTIVE DATE of the CONTRACT, or having been obtained is subsequently withdrawn, the COMPANY shall have the right to make deductions from any amounts due to the CONTRACTOR up to the maximum estimated potential tax liability arising to the person or persons whose exemption certificate has not been obtained or has been withdrawn, as reasonably computed by the COMPANY, arising out of the CONTRACT.

If any such deductions are made by the COMPANY, these shall be paid to the CONTRACTOR on the receipt by the COMPANY of satisfactory evidence that the CONTRACTOR, SUBCONTRACTOR or other person employed by them or providing services to them on or in connection with the CONTRACT has paid all taxes arising out of the CONTRACT and HM Revenue and Customs will not be serving a notice on the COMPANY under Section 77C of the Taxes Management Act 1970.

"designated area" shall for the purpose of this Clause bear the same meaning as that given to the "UK sector of the Continental Shelf" in Section 874 of the Income Tax (Trading and Other Income) Act 2005 and/or "designated area" in Section 278 of the Corporation Tax Act 2010 and/or "designated area" in Section 276 of the Taxation Chargeable Gains Act 1992.

"resident" shall for the purpose of this Clause mean that the company or person is regarded by HM Revenue and Customs as United Kingdom resident.

24.5 Where any of the WORK involves the performance of construction operations as defined for the purposes of Chapter III of Part KKK of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 (in this Clause, the "Regulations") (together, the "Construction Industry Scheme") then the PARTIES shall comply with the provisions of the Construction Industry Scheme.

Payments under the CONTRACT by the COMPANY in respect of construction operations shall be made net of any deductions which the COMPANY is required to make by law.

The CONTRACTOR shall provide the COMPANY with such information about the CONTRACTOR as is required by the COMPANY to verify with the Commissioners of HM Revenue and Customs whether the CONTRACTOR is registered for gross payment or for payment under deduction or is not registered for the purposes of the Construction Industry Scheme and shall provide the COMPANY with any such further information to enable the COMPANY to calculate accurately any deduction applicable under the Construction Industry Scheme to any payments under the CONTRACT.



Where at the due date for payment, the COMPANY has not received such information, all payments will be made subject to maximum deductions as could be required by law.

The COMPANY shall not be liable to reimburse the CONTRACTOR for any over-deduction under this Clause or for any tax arising as a result of the CONTRACTOR's failure to provide such information promptly or to provide sufficient information.

- 24.6 The CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY against all levies, charges, contributions and taxes of the type referred to in this Clause and any interest or penalty thereon which may be assessed, by any appropriate governmental authority whether of the United Kingdom or elsewhere, on the CONTRACTOR GROUP, in connection with the CONTRACT and from all costs reasonably incurred in connection therewith.
- 24.7 If the COMPANY receives a notice requiring it to pay any levies, charges, contributions or taxes of the types referred to in this Clause and/or any interest or penalty thereon whether with respect to the CONTRACTOR, any SUBCONTRACTOR, their respective AFFILIATES or any other person employed by the CONTRACTOR or any SUBCONTRACTOR or providing any services to the CONTRACTOR or any SUBCONTRACTOR on or in connection with the CONTRACT, the COMPANY shall forthwith notify the CONTRACTOR who shall work with the COMPANY to make all reasonable endeavours to make any valid appeal against such payment. If the COMPANY is ultimately required to make such payment, the COMPANY may recover from the CONTRACTOR any such sums and all costs reasonably incurred in connection therewith and the CONTRACTOR shall within fourteen (14) days of receiving written notice from the COMPANY pay to the COMPANY any such sum or the COMPANY shall be entitled to deduct such sums from any monies due, or which may become due, to the CONTRACTOR.
- 24.8 The COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR against all levies, charges, contributions and taxes of the type referred to in this Clause and any interest or penalty thereon which may be assessed, by any appropriate governmental authority whether of the United Kingdom or elsewhere, on the COMPANY in connection with the CONTRACT and from all costs incurred in connection therewith, other than those taxes and other matters referred to above which the provisions of this Clause allow the COMPANY to recover from the CONTRACTOR.

#### **Customs Procedures**

- 24.9 The CONTRACTOR shall be wholly responsible for and shall pay and make payment at such times when due and payable, all import/export taxes and duties on materials, goods, tools, equipment and supplies required for the proper performance of its obligations under the CONTRACT. The CONTRACTOR will be responsible for ensuring that it holds the necessary import/export licenses issued by the relevant authorities prior to the commencement of the WORK or delivery of the GOODS.
- 24.10 Where GOODS are sold to the COMPANY under the CONTRACT the CONTRACTOR shall prepare and provide to the COMPANY full documentation to show and certify all information regarding items subject to customs control, including the origin, customs status and customs commodity code number as may be necessary for the COMPANY to minimise or nullify the effect of customs duty on such GOODS and make available on a confidential basis to the local customs authorities all data reasonably necessary to enable the CONTRACTOR to obtain the maximum benefits in terms of reliefs and shall pass all such benefits in full to the COMPANY.
- 24.11 The CONTRACTOR who is in possession of GOODS, materials, tools, equipment or supplies subject to customs control at any given time shall be accountable and liable for compliance in respect to customs regulations and procedures and shall save, indemnify, defend and hold harmless COMPANY GROUP and CLIENT GROUP (in each case on demand) from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature (including but not limited to any levies, charges, fines, taxes, or penalties which may be assessed by any governmental authority) for, or arising out of, any failure of CONTRACTOR or member of CONTRACTOR GROUP to comply with such customs regulations and procedures arising out of or in connection with the CONTRACT.



**25. Termination**

25.1 The COMPANY shall have the right by giving notice to terminate all or any part of the CONTRACT at such time or times as the COMPANY may, in its sole discretion, consider necessary for any or all of the following reasons:

- (a) To suit the convenience of the COMPANY; or
- (b) In accordance with Clause 21 (Force Majeure); or
- (c) In accordance with Clause 5 (Delivery); or
- (d) In accordance with Clause 39 (Business Ethics and Anti-Bribery); or
- (e) Subject only to Clause 25.2, in the event of any default on the part of the CONTRACTOR or any SUBCONTRACTOR; or
- (f) In the event of the CONTRACTOR becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of the CONTRACTOR is made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up is passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking is appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law in any jurisdiction.

25.2 In the event of default on the part of the CONTRACTOR or any SUBCONTRACTOR and before the issue by the COMPANY of an order of termination of all or any part of the CONTRACT, the COMPANY shall give notice of default to the CONTRACTOR giving the details of such default. If the CONTRACTOR upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of termination in accordance with the provisions of Clause 25.1.

25.3 If the CONTRACT is terminated in accordance with Clause 25.1 or 25.2, the only remaining commitment for COMPANY will be for the COMPANY to pay for GOODS delivered by CONTRACTOR by the effective date of termination, accepted by COMPANY, and which comply in all respects with the CONTRACT but not yet paid for and/or WORK performed up to the effective date of termination, accepted by COMPANY, and which comply in all respects with the CONTRACT but not yet paid for.

25.4 Following termination or expiration of the CONTRACT, the following provisions shall survive the expiration and/or termination and shall remain in full force and effect; 5 (Delivery), 10 (Documentation), 16 (Warranty), 19 (Examination and Defects Correction), 24 (Tax and Customs), 28 (Indemnities), 29 (Consequential Loss), 30 (Insurance), 31 (Confidentiality), 34 (Laws and Language), 35 (Dispute Resolution) and 39 (Business Ethics and Anti-bribery). All obligations and liabilities both PARTIES acquire under these provisions shall still apply following termination and/or expiration.

**26. Status of COMPANY**

26.1 The COMPANY enters into the CONTRACT on behalf of itself, its AFFILIATES and any joint venture partners. Without prejudice to Clause 36 (Third Party Rights) and notwithstanding the foregoing:

- (a) the CONTRACTOR agrees to look only to the COMPANY for the due performance of the CONTRACT and nothing contained in the CONTRACT will impose any liability upon, or entitle the CONTRACTOR to commence any proceedings against any AFFILIATE or joint venture partner of the COMPANY other than the COMPANY; and



(b) the COMPANY is entitled to enforce the CONTRACT on behalf of all AFFILIATES and joint venture partners as well as for itself. For that purpose the COMPANY may commence proceedings in its own name to enforce all obligations and liabilities of the CONTRACTOR and to make any claim which any AFFILIATE or joint venture partner may have against the CONTRACTOR.

## **27. Intellectual Property Rights**

27.1 Where any Intellectual Property Right results from:

(a) developments by the CONTRACTOR GROUP which are based wholly on data, equipment, processes, substances and the like in the possession of the CONTRACTOR GROUP at the date of the CONTRACT or otherwise produced outside of the CONTRACT and which don't belong to COMPANY or any member of COMPANY GROUP; or

(b) enhancements of or in the existing intellectual property rights of the CONTRACTOR GROUP, such rights shall vest in the CONTRACTOR or another company within the CONTRACTOR GROUP as the case may be.

27.2 Where any Intellectual Property Right results from:

(a) developments by the COMPANY GROUP which are based wholly on data, equipment, processes, substances and the like in the possession of the COMPANY GROUP at the date of the CONTRACT or otherwise produced outside of the CONTRACT; or

(b) enhancements of or in the existing intellectual property rights of the COMPANY GROUP, such rights shall vest in the COMPANY, its AFFILIATES or CO-VENTURERS as the case may be.

27.3 Except as provided in Clause 27.1 and Clause 27.2, where any Intellectual Property Right arises out of the WORK and is invented during the term of the CONTRACT, such rights shall vest in the COMPANY.

27.4 The CONTRACTOR warrants to COMPANY that the GOODS and/or WORK may be freely used by COMPANY GROUP and each CLIENT GROUP without infringing any INTELLECTUAL PROPERTY RIGHTS of the CONTRACTOR or any other person or entity.

27.5 The CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP and each CLIENT GROUP (in each case on demand) from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any infringement or alleged infringement of any INTELLECTUAL PROPERTY RIGHTS arising out of or in connection with the performance of the obligations of the CONTRACTOR under the CONTRACT or use by any member of COMPANY GROUP or any CLIENT GROUP of the GOODS and/or WORK.

## **28. Indemnity Arrangements**

28.1 The CONTRACTOR shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP and CLIENT GROUP (in each case on demand) from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of:

(a) loss of or damage to property of the CONTRACTOR GROUP whether owned, hired, leased or otherwise provided by the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and

(b) personal injury including but not limited to death or disease to any member of the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and

(c) subject to any other express provisions of the CONTRACT, personal injury including but not limited to death or disease or loss of or damage to the property of any Third Party to the extent that any such injury,



loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the CONTRACTOR GROUP. For the purposes of this Clause 28.1(c) "Third Party" shall mean any party, which is not a member of the COMPANY GROUP or the CONTRACTOR GROUP.

28.2 The COMPANY shall be responsible for and shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of:

(a) loss of or damage to property of the COMPANY GROUP whether owned, hired or leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT, but excluding the GOODS and/or materials, tools, equipment or supplies associated with the WORK prior to delivery and acceptance; and

(b) personal injury including but not limited to death or disease to any member of the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and

(c) subject to any other express provisions of the CONTRACT, personal injury including but not limited to death or disease or loss of or damage to the property of any Third Party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP. For the purposes of this Clause 28.2(c) "Third Party" shall mean any party which is not a member of the CONTRACTOR GROUP or the COMPANY GROUP.

28.3 Unless otherwise expressly provided for in the CONTRACT, exclusions, liabilities and indemnities given under the CONTRACT shall apply irrespective of cause and notwithstanding the negligence, breach of duty (statutory or otherwise) or other failure of any nature of the indemnified PARTY and shall apply irrespective of any claim in tort, contract or otherwise at law. All indemnities under the CONTRACT shall be full and primary and shall be fully enforceable irrespective any separate right of indemnity or contribution from any party unless otherwise provided for herein. Notwithstanding the above, liabilities, exclusions and indemnities given under the CONTRACT shall not apply in case of GROSS NEGLIGENCE or WILFUL MISCONDUCT of the CONTRACTOR GROUP.

28.4 If either PARTY becomes aware of any incident likely to give rise to a claim under the above indemnities it shall notify the other and both PARTIES shall co-operate fully in investigating the incident.

28.5 Each PARTY expressly agrees that the indemnities set out in this Clause 28 do not extend to criminal sanctions, fines or penalties imposed upon it, arising from, relating to or in connection with the performance of the CONTRACT.

## **29. Consequential Loss**

29.1 For the purposes of this Clause the expression "Consequential Loss" shall mean:

(a) all consequential or indirect loss or damage under applicable law; and

(b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each of the aforementioned cases whether classed as direct or indirect to the extent that these are not included in (a), arising out of or in connection with the performance or non-performance of this CONTRACT and whether or not foreseeable at the EFFECTIVE DATE of the CONTRACT.

29.2 Notwithstanding any provision to the contrary elsewhere in the CONTRACT and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the CONTRACT, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP's own Consequential Loss and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP and any CLIENT GROUP (in each case on demand) from the CONTRACTOR GROUP's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.



**30. Insurance**

30.1 The CONTRACTOR shall arrange as a minimum the insurances set out in this Clause and ensure that they are in full force and effect throughout the life of the CONTRACT. All such insurances shall be placed with reputable and substantial insurers and shall for all insurances (including insurances provided by any SUBCONTRACTORS), other than Employers' Liability Insurance and/or Workmen's Compensation, to the extent of the liabilities assumed by the CONTRACTOR under the CONTRACT, include the COMPANY, CLIENT, any joint venture partners and its and their respective AFFILIATES as additional assureds. All insurances required under this Clause shall be endorsed to provide that underwriters waive all rights of recourse, including in particular subrogation against the COMPANY, CLIENTS, any joint venture partners, and its and their respective AFFILIATES in relation to the CONTRACT to the extent of the liabilities assumed by CONTRACTOR under the CONTRACT. Such insurances shall also where possible, provide that the COMPANY shall be given not less than thirty (30) days' notice of cancellation of or material change to cover. The provisions of this Clause shall in no way limit the liability of the CONTRACTOR under the CONTRACT.

30.2 The insurances required to be effected under Clause 30.1 shall be as follows (to the extent they are relevant to the scope of the CONTRACT):

- (a) Employers' Liability and/or Workmen's Compensation and/or other social insurance required by law covering personal injury to or death of the employees of CONTRACTOR engaged in the performances of the WORK and/or delivery of the GOODS to the minimum value required by any applicable legislation;
- (b) General Third Party Liability insurance for any incident or series of incidents covering the operations of the CONTRACTOR in the performance of the CONTRACT with a minimum amount of £10,000,000 in the UK or \$5,000,000 (USD) worldwide, unless applicable legislation dictates otherwise and COMPANY has agreed to the alternative amount, which will be specified in the CONTRACT;
- (c) Third Party and Passenger Liability insurance and other motor insurance as required by applicable jurisdiction;
- (d) Such further insurances (if any) as required by COMPANY.

30.3 The CONTRACTOR shall supply the COMPANY with evidence of such insurances on demand.

30.4 The CONTRACTOR shall ensure any of its SUBCONTRACTORS are insured to the appropriate levels as may be relevant to their work.

**31. Confidentiality**

31.1 For the purposes of this Clause, the following definitions shall apply:

- (a) "CONFIDENTIAL INFORMATION" means all information disclosed under or in connection with this CONTRACT (including but not limited to any CLIENT information).
- (b) "DISCLOSING PARTY" means either the CONTRACTOR or COMPANY, as applicable, who discloses CONFIDENTIAL INFORMATION under this Clause 31.
- (c) "RECEIVING PARTY" means either the CONTRACTOR or COMPANY, as applicable, who receives CONFIDENTIAL INFORMATION under this Clause 31 from DISCLOSING PARTY.

31.2 Both the COMPANY and CONTRACTOR agree that all CONFIDENTIAL INFORMATION, except information in the public domain or lawfully in possession of the RECEIVING PARTY prior to the EFFECTIVE DATE, shall be considered confidential and shall not be disclosed to any other person or entity without the prior written consent of the DISCLOSING PARTY. This obligation of confidentiality shall remain in force for a period of five (5) years following the delivery of the GOODS and/or completion of the WORK or earlier termination of the CONTRACT. Notwithstanding the foregoing, CONFIDENTIAL INFORMATION may be



disclosed by the RECEIVING PARTY without consent and without violating the obligations contained in this Clause 31 in the following circumstances:

- (a) to an AFFILIATE of the RECEIVING PARTY provided the AFFILIATE is bound to the provisions of this Clause 31 and the RECEIVING PARTY remains liable and accepts liability for the violation of an AFFILIATE of this Clause 31;
- (b) to a governmental authority, if required to do so, or other entity when expressly required by the CONTRACT;
- (c) to the extent such information is required to be furnished in compliance with the applicable Laws/Regulations, or pursuant to any legal proceedings or because of any order of any court binding upon the RECEIVING PARTY;
- (d) to legal advisors engaged, or proposed to be engaged, by the RECEIVING PARTY where disclosure of such information is reasonably necessary to such legal advisors' work for the RECEIVING PARTY and such legal advisors are bound by an obligation of confidentiality;
- (e) to contractors and consultants engaged (except those in (d) above), or proposed to be engaged, by the RECEIVING PARTY where disclosure of such information is reasonably necessary to such contractor's or consultant's work for the RECEIVING PARTY;
- (f) to a bank or other financial institution to the extent appropriate to the RECEIVING PARTY arranging for funding;
- (g) to the extent such information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over the RECEIVING PARTY, or one or more of its AFFILIATES;
- (h) to its respective directors, officers and employees, subject to the RECEIVING PARTY taking sufficient precautions to ensure such information is kept confidential;
- (i) to the extent of any information which, through no fault of the RECEIVING PARTY, becomes a part of the public domain.

31.2 Disclosures pursuant to sub-clauses (d), (e), (f) and (g) shall not be made, unless prior to such disclosure the RECEIVING PARTY has obtained a written undertaking from the recipient to keep the CONFIDENTIAL INFORMATION strictly confidential for at least as long as the period set out above and to use the information for the sole purpose described in Sub-clauses (e), (f) and (g), whichever is applicable.

## **32. Notices**

32.1 All formal notices in respect of the CONTRACT shall be given in writing and delivered by hand, by email, or by courier to the relevant authorities specified in the CONTRACT and copies to such other office(s) of the PARTIES as shall from time to time be nominated by them in writing to the other.

32.2 Such notices shall be effective:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by email, on the first working day following the date of sending as evidenced by the delivered report produced by sender;
- (c) if sent by courier, forty eight (48) hours after the time of posting.



32.3 Subject to any specific administrative instructions agreed between the PARTIES, any standard business correspondence associated with the CONTRACT and/or the GOODS and/or the WORK may be sent by email, fax, or letter.

**33. Special Terms and Conditions**

33.1 The CONTRACTOR and the COMPANY agree that any special terms and conditions set out in the PURCHASE ORDER will take precedence over the general terms and conditions set out in these SUPPLIER TERMS AND CONDITIONS.

**34. Laws and Language**

34.1 The CONTRACTOR shall comply, and shall secure compliance by any SUBCONTRACTOR, with all applicable laws, rules and regulations of any governmental authority or regulatory body having jurisdiction over the GOODS, WORK and/or work site.

34.2 The CONTRACTOR shall obtain all licenses, permits, temporary permits and authorisations required by the applicable laws, rules and regulations for the performance of CONTRACT save to the extent that the same can only be legally obtained by CONTRACTOR.

34.3 All costs for compliance with all applicable laws, rules and regulations and obtaining authorities, approvals, licenses, and permits for performance of the CONTRACT shall be for the account of the CONTRACTOR, unless otherwise provided for in the CONTRACT.

34.4 The CONTRACT, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter, shall be governed and construed in accordance with English Law excluding those conflict of law rules and choice of law principles which would deem otherwise, and subject to the provisions of Clause 35 (Dispute Resolution), shall be subject to the exclusive jurisdiction of the English Courts.

34.5 The ruling language of the CONTRACT shall be the English Language.

**35. Dispute Resolution**

35.1 Any dispute between the PARTIES in connection with or arising out of the CONTRACT or the GOODS and/or WORK shall be resolved by means of the following procedure:

(a) the dispute shall initially be referred, by means of a formal notice sent by either PARTY in accordance with Clause 32 (Notices), to the COMPANY representative or CONTRACTOR representative who shall discuss the matter in dispute and make all reasonable efforts to achieve an agreement;

(b) if no agreement is reached under Clause 35.1(a) above within fourteen (14) days of the service of such formal notice, the dispute shall be referred to such senior managers as nominated by the PARTIES;

(c) if no agreement is reached under Clause 35.1(b) above within fourteen (14) days of the expiry of the period referred to in Clause 35.1(b) (that is, within twenty-eight (28) days of the service of the formal notice referred to in Clause 35.1(a)), the dispute shall be referred to the appropriate senior executive of each of the PARTIES, being a more senior person than the person referred to in Clause 34.1(b), who shall discuss the matter in dispute within twenty one (21) days of expiry of the period referred to above (that is forty-nine (49) days of the service of the formal notice referred to in Clause 35.1(a)).

35.2 If no agreement is reached under Clause 35.1 above, either PARTY shall initiate arbitration proceedings in accordance with the London Court of International Arbitration (LCIA) Rules (applicable at the time of submission of the dispute to arbitration) and the PARTIES shall submit to final, binding arbitration by three (3) arbitrators appointed in accordance with such rules. The law of the arbitration shall be the Arbitration Act 1996. The conduct of the arbitration proceedings shall be in English and the venue of the arbitration shall be London, England. The arbitral award shall be final and binding on the PARTIES.



However, this Clause shall not preclude the PARTIES from bringing an action in any court of competent jurisdiction for injunctive relief or other provisional remedy in relation to any dispute in connection with the CONTRACT.

35.3 Whilst any matter or matters are in dispute, the CONTRACTOR shall proceed with the execution and completion of delivery of GOODS and/or performance of WORK, and both PARTIES shall comply with all provisions of the CONTRACT.

## **36. Third Party Rights**

36.1 Subject to Clause 36.3 or as otherwise expressly provided in the CONTRACT, the parties intend that no provision of the CONTRACT shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 (the "Act"), or local equivalent, confer any benefit on, nor be enforceable by any person who is not a party to the CONTRACT.

36.2 For the purposes of this Clause 36, "Third Party" means any member of the COMPANY GROUP (other than COMPANY) or CONTRACTOR GROUP (other than the CONTRACTOR).

36.3 Subject to the remaining provisions of the CONTRACT, Clause 27 (Intellectual Property Rights), Clause 28 (Indemnity Arrangements), Clause 29 (Consequential Loss), and Clause 30 (Insurance) are intended to be enforceable by a Third Party by virtue of the Act.

36.4 Notwithstanding Clause 36.3, the CONTRACT may be rescinded, amended or varied by the parties to the CONTRACT without notice to or consent of any Third Party even if, as a result, that Third Party's right to enforce a term of this CONTRACT may be varied or extinguished.

36.5 The rights of any Third Party under Clause 36.3 shall be subject to the following:

(a) any claim, or reliance on any term of the CONTRACT by a Third Party shall be notified in writing as soon as the Third Party becomes aware that an event likely to give rise to such a claim and such notification shall contain the following information as a minimum: (i) details of the occurrence giving rise to the claim; and (ii) the right relied upon by the Third Party under the CONTRACT;

(b) the provisions of Clause 35 (Dispute Resolution) shall apply in respect of any claim by a Third Party in that the relevant parties agree to resolve any dispute between them in a prompt and amicable manner by adopting the provisions of Clause 35 (Dispute Resolution);

(c) the Third Party's written agreement to submit irrevocably to the jurisdiction of the English Courts in respect of all matters relating to such rights.

36.6 A Third Party shall not be entitled to assign any benefit or right conferred on it under this CONTRACT by virtue of the Act.

## **37. Audit and Storage of Documents**

37.1 During the course of performance of the CONTRACT and for a period ending six (6) years thereafter, to the extent allowed under the applicable law, the COMPANY or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the CONTRACTOR GROUP's records (howsoever stored), books, personnel records, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to:

(a) All invoiced charges made by the CONTRACTOR on the COMPANY; and

(b) Any provision of the CONTRACT under which the CONTRACTOR has obligations the performance of which is capable of being verified by audit.



- 37.2 The CONTRACTOR shall cooperate fully with the COMPANY and/or its representatives in the carrying out of any audit required by the COMPANY. The COMPANY will conduct an audit in a manner which will keep to a reasonable minimum any inconvenience to CONTRACTOR.
- 37.3 The CONTRACTOR shall obtain equivalent rights of audit to those specified above from all SUBCONTRACTORS and suppliers and will cause such rights to extend to the COMPANY.
- 37.4 The PARTIES shall keep all documents and data (howsoever stored), related to this CONTRACT for a period of not less than six (6) years after the date of completion of the performance under the CONTRACT.

**38. Liens**

- 38.1 The CONTRACTOR shall not claim any lien or attachment on the WORK or on any property of the COMPANY in the possession of the CONTRACTOR or at the worksite.
- 38.2 Without prejudice to any other provisions of this Clause 38, the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY from and against all liens or attachments by any SUBCONTRACTORS in connection with or arising out of the CONTRACT.
- 38.3 The CONTRACTOR shall immediately notify the COMPANY of any possible lien or attachment which may affect the WORK or any part thereof.
- 38.4 If at any time there is evidence of any lien or attachment to which, if established, the COMPANY or its property might be subjected, whether made by any persons against the CONTRACTOR or made by any SUBCONTRACTOR against the COMPANY, then the COMPANY shall have the right to withhold and/or set off or otherwise recover from the CONTRACTOR such sum of money as will fully indemnify the COMPANY against any such lien or attachment.
- 38.5 Before withholding any payment due to the CONTRACTOR in accordance with Clause 38.4, the COMPANY shall give to the CONTRACTOR a reasonable opportunity to demonstrate that the purported lien or attachment is either unenforceable or is covered by the provisions of a security to the reasonable satisfaction of the COMPANY.
- 38.6 For the purpose of this Clause 38 reference to the COMPANY shall include the CO-VENTURERS and its and their AFFILIATES and references to the CONTRACTOR shall include its AFFILIATES.

**39. Business Ethics and Anti-Bribery**

- 39.1 Both PARTIES shall uphold the highest standards of business ethics in the performance of the CONTRACT. Honesty, fairness and integrity shall be paramount principles in the dealings between the PARTIES.
- 39.2 Neither PARTY shall knowingly involve itself in any business in connection with, or use information arising from, the CONTRACT, in any manner which conflicts with the interests of the other PARTY.
- 39.3 (a) The CONTRACTOR represents and warrants that it will comply with all applicable laws in respect of the performance of its obligations under the CONTRACT including without limitation all applicable laws and regulations relating to taxation, exchange controls, customs matters, anti-corruption, anti-trust, anti-money laundering, trade sanctions and criminal matters. In particular, the CONTRACTOR shall fully comply with the provisions of: (i) the Bribery Act 2010 (as enacted in the United Kingdom and as supplemented and/or amended from time to time), (ii) the Foreign Corrupt Practices Act 1977 (as enacted in the United States of America, supplemented and/or amended from time to time), and (iii) all applicable laws of any countries or countries in which any of the obligations of the CONTRACT are to be performed, collectively "Applicable Anti-Bribery Laws", and the CONTRACTOR represents and warrants that it will not do anything which could contravene the Applicable Anti-Bribery Laws or cause the COMPANY GROUP or CLIENT GROUP to contravene the Applicable Anti-Bribery Laws. Furthermore, the CONTRACTOR represents and warrants that it will not receive, make payment of or offer to make payment of or receive any inducement, improper payment or bribe in relation to the GOODS and/or WORK.



(b) COMPANY expressly prohibits payment of bribes and also payment of any "facilitation" or "grease" payments in connection with COMPANY business operations by any contractor or agent engaged to provide goods or services to COMPANY. The CONTRACTOR agrees, undertakes and confirms that each member of CONTRACTOR GROUP has not and will not give or receive or authorize to give or receive or promise to give (either directly or indirectly) any money, personal services or any other thing of value (with the exception of customary promotional materials and occasional reasonable business entertainment) to influence, obtain, induce or reward any improper advantage in connection with the award of any contract, including but not limited to this CONTRACT, or any other business transactions involving COMPANY and/or its AFFILIATES. The CONTRACTOR also undertakes not to engage in any activity which may reasonably be deemed by the COMPANY to be a corrupt practice. The CONTRACTOR represents and warrants that no portion of the money paid to it and no proportion of any other benefit provided to it pursuant to the CONTRACT has been or shall be directly or indirectly granted, paid, offered or promised for the purpose of influencing the award or retention of business from the COMPANY.

(c) The CONTRACTOR shall ensure that neither it nor anyone acting on its behalf, including any Third Party retained by it to provide services directly or indirectly to COMPANY pursuant to the CONTRACT, either directly or indirectly makes, offers, promises or authorises payment of a bribe or an improper payment to any government official in connection with the CONTRACT. For the purposes of this Clause 39, the term "government official" shall include (i) any minister, civil servant, director, officer or employee or other official of any government or any department, agency or instrumentality thereof, and/or of any government-owned or controlled company, any company or enterprise in which a government owns interest, and/or of any public international organization, or (ii) any close family member of any of the foregoing. This term also includes any person acting in any official, legislative, administrative or judicial capacity for or on behalf of such government or department, agency, instrumentality, company, or public international organization, including without limit, any judges or other court officials, military personnel and customs, police, national security or other law enforcement personnel.

(d) The CONTRACTOR will promptly report to the COMPANY if the CONTRACTOR becomes aware that any bribe or improper payment has been paid in relation to the GOODS and/or WORK or if the CONTRACTOR has reasonable grounds to believe that any such bribe or improper payment has been paid. In such a circumstance, the CONTRACTOR shall also cooperate in good faith with any investigations which the COMPANY GROUP or CLIENT GROUP may seek to initiate in order to determine whether any such bribe or improper payment has been paid.

(e) The CONTRACTOR shall maintain internal controls systems that are sufficient to ensure proper authorisation, recording and reporting of all transactions to provide reasonable assurance that violations of the anti-corruption laws of the applicable jurisdiction will be prevented, detected, and deterred.

(f) CONTRACTOR shall have in place, maintain and enforce its own policies and procedures which are designed to ensure, and which are reasonably expected to continue to ensure, compliance with anti-corruption laws and obligations and which are sufficient to enable COMPANY to verify CONTRACTOR's compliance with anti-corruption laws and obligations.

(g) The CONTRACTOR agrees that all members of CONTRACTOR GROUP shall comply with any codes of conduct issued to CONTRACTOR by the COMPANY from time to time in relation to anti-corruption matters. The CONTRACTOR shall cooperate with COMPANY where COMPANY requests that CONTRACTOR receives its anti-corruption training.

(h) CONTRACTOR agrees and acknowledges that COMPANY, itself or through its duly appointed representatives, shall have the right to inspect and audit any and all books and records of CONTRACTOR relating to CONTRACTOR compliance with its obligations under this Clause 39, and to make copies, at its expense, of any such books and records.

(i) COMPANY may withhold any payments which are payable to the CONTRACTOR under the CONTRACT and the COMPANY may also suspend the CONTRACT at any time and without liability if it believes, in good faith, that the CONTRACTOR has breached any of the obligations it has undertaken under this Clause 39.



The PARTIES agree that if any member of the CONTRACTOR GROUP breaches this Clause 39, the COMPANY shall have the right to terminate the CONTRACT under Clause 25 (Termination).

(j) CONTRACTOR represents and warrants that, except as otherwise disclosed by notice to COMPANY, as of the date of signature and for the duration of the CONTRACT, (i) no government official will have a direct or indirect interest in CONTRACTOR or in this CONTRACT, or the proceeds thereof; (ii) none of its directors, officers, employees or other service providers in connection with this CONTRACT is a government official; (iii) it shall notify COMPANY promptly and in writing of any change in the foregoing. Additionally, CONTRACTOR represents and warrants that none of its directors, officers or key employees in connection with this CONTRACT have in the last ten years been convicted of any offense involving bribery, corruption, or money laundering, or have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offense or alleged offense involving bribery, corruption or money-laundering.

(k) CONTRACTOR further agrees and undertakes that with respect to any SUBCONTRACTOR it may engage in connection with this CONTRACT that (i) it will conduct appropriate due diligence prior to appointing or engaging such SUBCONTRACTOR to ensure that they are duly qualified to perform the tasks for which they have been engaged and that they are of good reputation, and (ii) it will cause any such SUBCONTRACTOR to agree, in writing, to compliance with laws and anti-corruption obligations and undertakings substantially equivalent to those set forth in this Clause 39 and audit and inspection provisions substantially equivalent to those set forth in Clauses 37 and 39, such that both COMPANY and CONTRACTOR shall each have the same rights with respect to any SUBCONTRACTOR (including without limit the same rights of inspection and audit with respect to the books and records of that SUBCONTRACTOR) that COMPANY has with respect to CONTRACTOR under this CONTRACT.

(l) The CONTRACTOR shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP and CLIENT GROUP for all time on demand from any and all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of any breach of the obligations set out in Clause 39 by the CONTRACTOR, any person working for the CONTRACTOR, or any third party retained by the CONTRACTOR. The indemnity set out in this Clause 39.3(l) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the CONTRACTOR and/or any person working for the CONTRACTOR, and/or any third party retained by the CONTRACTOR.

#### **40. Health, Safety and Environment**

- 40.1 The COMPANY places prime importance on health, safety and environment (hereinafter "HS&E") issues and requires that the CONTRACTOR GROUP subscribes to and actively pursues the highest standards of HS&E performance.
- 40.2 The CONTRACTOR shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the WORK. The CONTRACTOR shall collaborate with the COMPANY in establishing HS&E interface arrangements and the production of a HS&E interface document.
- 40.3 Failure to satisfy the COMPANY's reasonable requirements with regards to the control of HS&E risks in any material respect will be regarded as due cause for the COMPANY giving notice to terminate all of any part of the WORK or the CONTRACT in accordance with Clause 25.1(e) (Termination).
- 40.4 The CONTRACTOR shall co-operate with the COMPANY in providing an appropriate response to any emergency occurring at the worksite and shall immediately take such action as may be necessary to protect life and make safe property where such is in imminent peril.

#### **41. Code of Conduct and Human Rights**

- 41.1 In connection with CONTRACTOR'S performance of the CONTRACT, CONTRACTOR undertakes that it has carefully reviewed, and undertakes and agrees to act consistently with and to adhere to the principles in, the



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COMPANY 'Supplier Code of Conduct'. Failure to comply with this provision may constitute a material default giving rise to termination pursuant to Clause 25 (Termination).

41.2 CONTRACTOR shall conduct its business in a manner that respects the rights and dignity of all people and internationally recognised human rights, including without limitation:

- (a) Not employing, engaging or otherwise using forced labor, trafficked labor or exploitative child labor; nor engaging in or condoning abusive or inhumane treatment of workers;
- (b) Providing equal opportunities, avoiding discrimination and respecting freedom of association of workers, in each case within the relevant national legal framework; and
- (c) Providing and maintaining a working environment free from harassment, including but not limited to, sexual harassment, and taking all necessary steps to prevent and address any form of harassment; and
- (d) Mitigating or avoiding adverse human rights impacts to communities arising from CONTRACTOR's activities to the extent practicable.

Failure to comply with this clause may constitute a material default giving rise to termination pursuant to Clause 25 (Termination).