



## TERMS AND CONDITIONS FOR PROVISION OF GOODS AND SERVICES

### 1. DEFINITIONS

- 1.1 "Affiliate" shall mean in relation to a company, any subsidiary or holding company of that company or any other subsidiary of such holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 and Schedule 6 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159 (1) (b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
- 1.2 "Amendment" shall mean a change to the original Order issued pursuant to and in accordance with Clause 8.
- 1.3 "Business Day" shall mean any day other than a Saturday or Sunday on which banks in Scotland and London are generally open for business.
- 1.4 "Completion Date" shall mean the date when the Work is fully performed and any goods or products intended to be sold or supplied by the Vendor and any related documents have been delivered to the Purchaser as agreed and approved, where applicable, in accordance with the Order.
- 1.5 "Conditions" shall mean these general terms and conditions of purchase
- 1.6 "Consequential Loss" shall mean:
- (a) consequential or indirect loss under English law; and
  - (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit, in each case whether direct, indirect or consequential to the extent that these are not included in (a) and whether or not foreseeable at the date of the Order.
- 1.7 "Delivery Date" shall mean the date specified in the Order as the Delivery Date.
- 1.8 "Defect" shall mean any defect or non-conformance in the Work, including any products or goods supplied under the Order, with the terms and conditions of the Order, whether resulting from faulty design, materials, installation or workmanship;
- 1.9 "Good Oilfield Practice" shall mean the application of those methods and practices customarily used in good and prudent oil and gas field practice with that degree of diligence and prudence reasonably and ordinarily exercised by experienced vendors in a similar activity under similar circumstances and conditions.
- 1.10 "Order" shall mean the Purchase Order issued by the Purchaser's purchasing department including the Conditions, and all documents expressly specified in the Purchase Order as comprising part of the Order, as varied by any Amendment.
- 1.11 "Party" shall mean the Purchaser or the Vendor, as the context may require and "Parties" shall mean the Vendor and the Purchaser.
- 1.12 "Price" shall mean all sums payable to Vendor as specified in the Order for performance of the Work.
- 1.13 "Purchaser" shall mean the Party identified as such in the Order;
- 1.14 "Purchaser Group" shall mean: Purchaser, its other contractors and subcontractors of any tier, its and their respective Affiliates, its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the Vendor Group.
- 1.15 "Vendor" shall mean the Party identified as such in the Order and to whom the Order is issued.
- 1.16 "Vendor Group" shall mean the Vendor, its suppliers and sub-contractors of any tier, its and their respective Affiliates, its and their respective directors, officers and employees (including agency personnel) and agents.
- 1.17 "Warranty Period" shall mean a period of two (2) years from the Completion Date.
- 1.18 "Work" shall mean the goods and/or services that the Vendor is required to provide under the Order as defined in the Order and which may be changed in



accordance with Clause 8 by written and agreed Amendment only.

- 1.19 Interpretation: (i) Words and defined terms importing the singular only also include the plural and vice versa where the context so requires; (ii) the headings of Clauses in the Order are included for ease of reference only and shall not be construed as limiting the meaning of any of the provisions contained in the said Clauses; (iii) reference to a person or entity include an individual, a body corporate, unincorporated association of persons, government, state, agency and any other entity whether or not having separate legal entity; (iv) words denoting one gender shall include all genders; (iv) a reference to any legislation or legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision; and (v) the words “includes” and “including” are illustrative, not limiting.

## 2. ACCEPTANCE OF ORDER

- 2.1 Unless otherwise specifically agreed in writing, Vendor’s acceptance of the Order and any Amendment shall be deemed to constitute an acceptance of and an agreement to comply with the Conditions and the terms of the Order. The Order shall have precedence over any terms and conditions appearing on any Order acknowledgement or Order acceptance documentation or any other terms and conditions or documentation issued by the Vendor or any member of the Vendor Group.
- 2.2 The Vendor’s acceptance of the Order and any Amendment or provision of the Work pursuant to the Order and any Amendment shall constitute acceptance thereof.

## 3. QUALITY AND DESCRIPTION

- 3.1 All Work shall:
- a) conform strictly as to quantity, quality and description with the particulars stated in the Order and with all laws, regulations and

statutory requirements applicable to such Work;

- b) be of satisfactory quality materials and workmanship;
- c) be in strict compliance with samples, patents, drawings or specifications, if any referred to in the Order;
- d) be performed in accordance with the standard of performance specified in the Order;
- e) be designed/provided for and fit for the intended use, application or purpose for which it is supplied, as described in the Order.
- 3.2 All work performed pursuant to the Order shall be performed in accordance with Good Oilfield Practice by suitably qualified and competent personnel and all equipment and tools provided shall at all times be maintained in first class operating condition by Vendor, and in the event that Vendor shall provide personnel the same shall be competent and suitably qualified and experienced for the purpose for which they are provided. Purchaser reserves the right to require the replacement of any personnel, equipment or tools provided by Vendor which in the Purchaser’s sole opinion are negligent or inadequate or do not comply with the foregoing provisions of Clause 3 at Vendor’s cost and the Vendor shall promptly replace the same at its cost.

## 4. PAYMENT

- 4.1 In consideration of the satisfactory performance of the Work in accordance with the Order, Purchaser shall pay Vendor the Price in the manner set out in the Order.
- 4.2 Vendor shall send Purchaser a detailed price invoice or invoices as instructed on the Order clearly stating the Order Number, the item numbers and the settlement terms under the Order and containing all information required to be stated on a tax invoice for VAT purposes.
- 4.3 Unless otherwise specified in the Order all payments hereunder shall be made by BACS within 45 days of receipt of Vendor’s true and correct invoice by the Purchaser, together with the required



- supporting documentation at Purchaser's invoicing address stated in the Order. Payment shall not operate as a waiver of any of the rights of Purchaser under the Order or otherwise.
- 4.4 Unless otherwise stated in the Order all payments hereunder shall be made in Great British Pounds (GBP or £).
- 4.5 Vendor acknowledges that, except as specifically provided in the Order, the rates and Prices contained therein are sufficient to cover all its obligations whether expressed or implied under the Order. Vendor shall be deemed to have satisfied itself as to all local conditions and other factors that may in any way affect the performance of the Work regardless of whether the Work or any part thereof is to be performed at Vendor's premises or at a location other than at Vendor's premises.
- 4.6 Purchaser reserves the right to audit Vendor's charges and it shall for a period of 2 years from the date of completion or delivery of the Work have access to any detailed cost data necessary for that purpose, and be entitled to copies of such data and supporting documents and information. The Vendor shall keep, and shall procure that the Vendor and its Affiliates and suppliers and subcontractors shall keep, such data at their respective offices for at least such period and the Vendor shall procure that access is provided to the Purchaser and its representatives to such data and to the Vendor's, and its Affiliates and its suppliers' and subcontractors' premises where such data is kept, on reasonable notice by the Purchaser.
- 4.7 Purchaser may withhold any payment due to Vendor to such extent as may in its opinion be necessary to protect the Purchaser from loss because of a concern as to whether the Work will comply with the requirements of the Order or reasonable suspicion of a breach by Vendor of any part of the Order, these Conditions, or due to a dispute on an invoice issued pursuant to this Order.

## 5. INSPECTION AND TESTING

- 5.1 Purchaser and its representatives shall at all reasonable times be granted access to any premises (including those of Vendor or its Affiliates or the Vendor's suppliers or subcontractors) and be allowed to inspect and test the Work at any time prior to acceptance or delivery of the Order, whichever shall be the later.
- 5.2 Purchaser and its representative shall have full power to reject any Work that it considers defective or inferior in quality of material, workmanship or design and/or not in accordance with the Order. Any Work so rejected shall immediately be replaced or corrected by the Vendor as required by Purchaser or its representative, at Vendor's expense. Vendor shall then re-submit the re-performed Work for re-inspection and re-testing at Vendor's cost.
- 5.3 Vendor shall make available at its own expense all tools, instruments, apparatus, facilities, services and materials necessary for carrying out tests on the Work (or on Purchaser's request, confirmatory re-tests), as may be required by Purchaser, and when requested the Work shall be completely assembled for such tests and at Purchaser's option shall be dismantled for inspection before despatch.
- 5.4 Where reasonably practical not less than 14 days' notice shall be given by Vendor to Purchaser that the Work or any part thereof is ready for inspection and/or testing.
- 5.5 Inspection, testing or acceptance of any Work or any waiver of any rights in respect thereof by Purchaser or its representative shall not relieve Vendor from any of its obligations or liabilities under the Order or otherwise, including without limitation, its responsibility for any Defects subsequently found in materials and/or workmanship.
- 5.6 Vendor shall supply at its own expense certificates of analysis, test, inspection or origin as may be required by Purchaser or required by law, which shall in any event be delivered to Purchaser on Delivery Date.

## 6. COMPLETION AND DELIVERY



- 6.1 The Work shall be completed by the Delivery Date specified in the Order as varied by any Amendment.
- 6.2 Vendor shall at its own expense, provide reasonable information concerning status and progress of the Work at regular intervals to ensure that the Work will be completed by the Delivery Date, including without limitation any information which the Purchaser may request.
- 6.3 If the Vendor fails to complete the Work by the Delivery Date, Vendor shall pay Purchaser 0.5% of the Order value as liquidated damages in respect of each calendar week (or pro rata thereof)'s delay in fulfilling the Order, up to a maximum of 10% of the Order value, payable on demand. The Purchaser and Vendor agree that these liquidated damages are reasonable and proportionate to protect the Purchaser's legitimate interest in performance.
- 6.4 Any part of the Work ready for delivery before Purchaser has authorised delivery shall be stored by Vendor at its own risk and expense.
- 6.5 Delivery of the Work shall be effected in the manner(s) and at time(s) specified by Purchaser. If the Work is not delivered in accordance with the Order requirements, Vendor shall be responsible for any additional expense arising therefrom. Except as otherwise specified in the order, Vendor shall be responsible for and bear the cost of packaging, loading and/or transportation of the Work.
- 6.6 Vendor shall take all necessary precautions, to ensure that all Work which is to be delivered to Purchaser is packaged in a safe and sufficient manner so as to avoid damage or loss to the Work whilst in transit and until delivered and the packaging shall comply with all statutory requirements and codes of practice applicable to the kind of Work the subject of the Order. Vendor shall indemnify Purchaser Group in respect of any and all loss, expense, damage, claim and liability incurred by Purchaser Group arising in connection with any breach of Vendor's obligations under this Clause.

- 6.7 Purchaser shall have the right to reject the delivery if the Work does not satisfy any of the requirements of the Order. In such circumstances, Purchaser may elect to terminate the Order in accordance with Clause 12.1, or by written notice require Vendor to replace and/or repair the Work as necessary in order to re-deliver the Order within a timescale agreed between the parties.

## 7. DEFECTS AND WARRANTY

- 7.1 The Vendor warrants that the Work, including any products and goods supplied pursuant to the Order, comply in all respects with Clause 3 of these Conditions and the Order and is free from Defects. The Vendor undertakes to remedy any Defects pursuant to Clause 7.
- 7.2 Vendor shall be responsible for remedying at his expense any Defects that may appear in the Work during the Warranty Period, irrespective of whether the Defect could have been detected or foreseen at the Completion Date or not. The Purchaser shall notify the Vendor in writing of any Defect without unreasonable delay after the Vendor became aware of the Defect and in no event later than three (3) weeks after the end of the Warranty Period.
- 7.3 Vendor shall be responsible for remedying at his expense any Defects in all remedial work carried out under Clause 7 for a further period of two (2) years from the performance of such remedial work. In no event shall the total warranty period for any repaired or replaced product or goods or remedied part of the Work exceed three (3) years from the Completion Date.
- 7.4 If any Defects which Vendor is obliged to remedy under this Clause 7, are not remedied within a reasonable time, or circumstances render it impracticable for Vendor to do the same, Purchaser may do so itself or authorise others to do the same, and Vendor shall reimburse Purchaser for all costs arising therefrom.
- 7.5 This warranty and Purchaser Group remedies hereunder are in addition to Purchaser Group's other rights and



remedies existing under the Order or at Law.

7.6 Where applicable, Purchaser shall have the right to assign the benefit of this warranty to its successors or assignees or clients of any tier.

7.7 Vendor shall obtain from all of its suppliers and subcontractors a warranty in identical terms to that required from Vendor under Clause 7 of the Order. Where required by Purchaser, Vendor shall enforce its supplier and/or subcontract warranties for the benefit of Purchaser or at Purchaser's discretion shall assign such warranties to Purchaser and assist such assignee in the enforcement thereof.

## 8. AMENDMENTS

8.1 Vendor will not perform any changes to the original Work requested by Purchaser without obtaining its written approval. Such changes may include, without limitation, additions to, or reductions in the quantity of Work. When Purchaser is contemplating any change to the Work, Purchaser shall give written notice to Vendor, who shall promptly advise Purchaser of its reasonable effect on Price and Delivery Date.

8.2 No change to the Work or to the Order shall be accepted by Purchaser and Purchaser shall not be liable to make any payment in respect thereof to Vendor or be bound by any change to the Work or to the Order unless such change has been authorised by written instruction of the Purchaser and subsequently confirmed by an Amendment issued by Purchaser's purchasing department.

## 9. ASSIGNMENT AND SUBCONTRACTING

9.1 Vendor shall not assign or transfer the Order or any part thereof or any of its rights under it nor subcontract any part of the Work, without Purchaser's prior written consent. No assignment or transfer or subcontract (even with Purchaser's consent) shall relieve Vendor of any of his obligations or liabilities under the Order.

9.2 Vendor shall at Purchaser's request, promptly supply Purchaser at no extra cost with un-priced copies of all subcontracts.

9.3 All applicable terms and conditions of the Order shall be imposed in all supply contracts and subcontracts entered into by Vendor.

## 10. STATUTORY AND SAFETY OBLIGATIONS

10.1 Vendor shall comply with, and shall ensure that Vendor Group shall comply with, all applicable statutes, laws, regulations, byelaws and EEC directives relating to the performance of the Order and shall comply with all applicable safety obligations and regulations, including any Purchaser's safety management procedures applicable to the services performed at the Purchaser's premises or drilling unit..

10.2 Vendor shall provide Purchaser in writing with such information as is necessary relating to the use of any materials and or equipment supplied and/or used and its design, testing, [storage] and use and relating to any conditions necessary to ensure it will be safe and without risk to health or safety when properly handled, stored, transported and used.

10.3 Vendor shall obtain all permits required to be given or obtained in Vendor's name, which may relate to the Work and are required by any statute, law or regulation and shall bear all costs in connection therewith.

10.4 The Vendor shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 in England and Wales ("Bribery Act 2010"), any applicable European Union Directives on anti-bribery and anti-corruption and the Foreign Corrupt Practices Act in the United States of America ("FCPA"). The Vendor shall also comply with the Purchaser's codes and policies on Anti-Bribery and Anti-Corruption. Any breach of this Clause shall be deemed a material breach under this Order.





- 10.5 Throughout the term of this Order, the Vendor shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives and the FCPA. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 10.6 The Vendor shall ensure that the Vendor Group comply with Clauses 10.4 and 10.5 above.

## **11. SUSPENSION**

- 11.1 Purchaser may by written notice require Vendor to suspend performance of the Work or any part thereof or the Order to the extent detailed in the notice, for any of the following reasons:
- (a) subject only to Clause 11.3, in the event of some default on the part of the Vendor; 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 Purchaser.
- 11.2 Upon receipt of any such notice, the Vendor shall, unless instructed otherwise:
- (a) discontinue the Work or the part of the Work detailed in the notice, on the date and to the extent specified; and
  - (b) during suspension properly protect the Work and properly protect and secure any materials or equipment used in the performance of the Work;
  - (c) minimise suspension costs (including costs relating to subcontracts).
- 11.3 In the event of a default on the part of the Vendor which is capable of remedy and before the issue by the Company of a notice to suspend the Work of any part thereof or notice to suspend the Order, the Purchaser shall give notice of default to the Vendor giving details of such default. If the Vendor, upon receipt of

such notice, does not commence and thereafter continuously proceed with action satisfactory to the Purchaser to remedy such default, the Purchaser may issue a notice of suspension in accordance with the provisions of Clause 11.1.

- 11.4 Except as provided in Clause 11.5, the Purchaser will reimburse the Vendor for Work performed up to the date of suspension.
- 11.5 Where the suspension results from default on the part of the Vendor Group, the Vendor shall not be entitled to any payment for such suspension and any additional costs reasonably incurred by the Purchaser as a direct result of the suspension shall be recoverable by the Purchaser from the Vendor.
- 11.7 The Purchaser may, by further notice, withdraw all or part of a suspension and instruct the Vendor to resume the Work to the extent specified and the Vendor will promptly resume the same.
- 11.8 During any period of suspension, the parties will not be relieved of any continuing obligations or liabilities under the Order. For the avoidance of doubt, the indemnities set out in the Order shall remain in force during the period of any such suspension.

## **12. TERMINATION FOR DEFAULT OR INSOLVENCY**

- 12.1 In the event of any default by Vendor in performance of any of its obligations hereunder, including, without limitation, failing to carry out the reasonable instructions of Purchaser (but specifically excluding the Vendor's failure to deliver the Work by the Delivery Date, which shall be subject to Clause 6.3 and Clause 12.4), Purchaser may when such default is capable of remedy give Vendor written notice to rectify such default within the time specified therein. If Vendor shall fail to comply with the requirements of the said notice or in the event that in Purchaser's sole opinion Vendor's default shall be incapable of remedy to Purchaser's satisfaction, Purchaser shall be entitled to terminate the Order in whole or in part or terminate the whole



or part of the Work immediately by serving notice in writing on Vendor to such effect without prejudice to any of its other rights under the Order or otherwise and shall have the right to retain any Work previously supplied under the Order.

- 12.2 The Purchaser shall have the right by giving notice to terminate the Order in whole or in part or terminate the whole or part of the Work at such time or times as it may consider necessary if Vendor becomes insolvent or makes a composition or arrangement with its creditors or a winding-up order of the Vendor is made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding up is passed or if a petition in insolvency is filed against it, or a liquidator, receiver, administrator, administrative receiver is appointed or the Vendor presents a petition or has a petition presented applying for an administration order to be made pursuant to Section 9 of the Insolvency Act 1986 in respect of the Vendor, or possession is 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 should be done or suffered under any applicable law in respect of the Vendor.
- or
- 12.3 Without prejudice to Purchaser's other rights, on termination of the Order or the Work or part thereof pursuant to Clause 12: (i) title to the Work, or the part which is terminated (in so far as it has not already passed to the Purchaser) shall forthwith pass to the Purchaser free from liens and encumbrances; (ii) the Vendor shall ensure that such Work, including any goods forming part of the Work, are preserved and suitably packed for collection, lifting and transportation by the Purchaser or any of its representatives from the premises or location where they are situated; (iii) Vendor shall also procure that Purchaser and its representatives shall be entitled to enter Vendor's premises or any place where the Work, including any goods

forming part of the Work, are situated and take possession of the whole or any part of the Work which is terminated, including any goods forming part of the Work, and remove the same and the Vendor shall promptly ensure that the Work which is terminated, including any goods forming part of such Work, are available for collection by the Purchaser and its representatives at such premises; and (iv) the Vendor shall forthwith upon the Purchaser's request to do so arrange for any supply contracts and/or sub-contracts for the Order or the Work which has been terminated to be transferred to the Purchaser, unless otherwise notified by the Purchaser. Furthermore, in the case of termination pursuant to Clause 12.1 or Clause 12.2 or Clause 12.4, Purchaser shall be entitled to retain and apply any balance of the Price in whole or in part which may be otherwise due to the Vendor towards the payment of completing the Work whether by itself or by a third party. If the cost of completing the Work exceeds the balance due to the Vendor, the Vendor shall pay the excess forthwith to the Purchaser in the case of termination pursuant to Clause 12.1 or Clause 12.2 or 12.4. The Purchaser shall be entitled to deduct such sums before paying the Vendor any sums due for performance of the Work up to the date of termination of the Order or the Work or part thereof.

- 12.4 In the event that liquidated damages are payable to the Purchaser pursuant to Clause 6.3, and the cap on liquidated damages in Clause 6.3 is reached, the Purchaser may terminate the Order immediately upon notice without prejudice to any of Purchaser's other rights under these Conditions.
- 12.5 In the event that the Vendor is affected by Force Majeure and either fails to fulfil its obligations within an extension agreed by the Purchaser under Clause 17.1 or the Force Majeure continues for more than thirty (30) days, the Purchaser may terminate the Order immediately upon notice. In the event of termination of the Order under this Clause 12.5, Purchaser shall pay the



Vendor in respect of the Work undertaken up to the point of termination as a proportion of the Order value, which shall be agreed between the parties acting reasonably.

### **13.0 TERMINATION FOR PURCHASER'S CONVENIENCE**

- 13.1 Purchaser shall be entitled at any time to terminate the Order in whole or in part or the Work in whole or in part for its convenience by serving notice in writing on Vendor to such effect and Vendor shall forthwith cease all performance hereunder for such terminated Order or Work or part unless and to the extent otherwise provided in the notice of termination. In such event, title in all Work which is terminated including goods and materials for which Vendor has been or shall be paid shall pass to Purchaser.
- 13.2 Vendor acknowledges its obligation to take all reasonable steps to mitigate costs and liabilities arising from such termination.
- 13.3 In the event of termination of the Order pursuant to Clause 13: (i) title to the Work or the part which is terminated (in so far as it has not already passed to the Purchaser) shall forthwith pass to the Purchaser free from liens and encumbrances; (ii) the Vendor shall ensure that such Work, including any goods forming part of the Work, are preserved and suitably packed for collection, lifting and transportation by the Purchaser or any of its representatives from the premises or location where they are situated; (iii) the Vendor shall also procure that the Purchaser and its representatives shall be entitled to enter Vendor's premises or any place where the Work, including the goods forming part of the Work, are situated and take possession of the whole or any part of the Work which is terminated, including any goods forming part of the Work, and remove the same and the Vendor shall promptly ensure that the Work which is terminated, including any goods forming part of such Work, are available for collection by the Purchaser and its

representatives at such premises or location; and (iv) the Vendor shall forthwith upon the Purchaser's request to do so, arrange for any supply contracts and/or sub-contracts for the Work to be transferred to the Purchaser, unless otherwise notified by the Purchaser.

- 13.4 In the event of termination of the Order under this Clause 13, Purchaser shall pay the Vendor:
- a) in respect of the Work undertaken up to the point of termination as a proportion of the Order value, which shall be agreed between the parties, acting reasonably; and
  - b) an amount equal to the value of any outlays incurred by the Vendor up to the date of termination, subject to Clause 13.2.

### **14.0 TITLE AND RISK**

- 14.1 Title in the Work shall pass to Purchaser on either
- a) When the Work or part of thereof are first identifiable as being appropriated to the Order; or
  - b) Payment for the Work (when title shall pass in proportion to the payments made therefore); or
  - c) Acceptance of the Work by Purchaser at the specified delivery point; or
  - d) termination of the Order or the Work or part thereof pursuant to Clause 12 or Clause 13.1, whichever occurs first.
- 14.2 Notwithstanding passage of title (in whole or in part) on the occurrence of (a), (b) or (d) above, risk shall remain with Vendor until delivery or acceptance of the Work by Purchaser in accordance with the provisions of the Order, whichever shall be the later.
- 14.3 All materials or equipment to be incorporated in the Work and Work the title of which has passed to Purchaser shall be clearly marked by Vendor as Purchaser's property and shall be stored separately by the Vendor from Vendor Group's or third parties' property.
- 14.4 Title and risk in rental equipment shall remain with Vendor at all times provided however that goods to be





supplied by the Vendor as part of the Work shall not be part of rental equipment

## 15.0 INDEMNITIES

15.1 Vendor shall indemnify and hold harmless Purchaser Group against any claims, liability, cost or expense (including legal costs and expenses) or damage whatsoever arising by reason of:

- a) personal injury (including disease) to or death of and loss of or damage to or loss of use of the property of any third party arising out of or in connection with the performance of this Order irrespective of the negligence or breach of duty (statutory or otherwise) of any member of Purchaser Group. The indemnity and hold harmless obligation in this Clause 15.1a shall be limited to GBP 5 million and any liability above such amount shall be determined in accordance with applicable law. Third party for the purposes of Clause 15.1 a shall mean any person other than a member of the Vendor Group or the Purchaser Group.
- b) personal injury (including disease) to or death of personnel of Vendor Group and/or loss of or damage to the property of the Vendor Group and/or loss of or damage to the property of the Purchaser Group to the extent that risk of such loss or damage is with the Vendor arising out of or in connection with the performance of this Order irrespective of the negligence or breach of duty (statutory or otherwise) of any member of the Purchaser Group.

15.2 Purchaser shall indemnify and hold harmless Vendor Group against any claims, liability, cost or expense (including legal costs and expenses) or damage whatsoever arising by reason of personal injury (including disease) to or death of employees of the Purchaser Group arising out of or in connection with the performance of this Order

irrespective of the negligence or breach of duty (statutory or otherwise) of any member of the Vendor Group.

15.3 Except for any liquidated damages which may be payable to the Purchaser under the Order or for the Price payable under the Order to the Vendor but notwithstanding any other provisions of the Order:

(i) Purchaser and the Vendor shall not be liable to each other for their own Consequential Loss; (ii) Vendor shall indemnify, defend and hold harmless Purchaser Group in respect of the Vendor Group's own Consequential Loss arising out of or in connection with this Order; and (iii) the Purchaser shall indemnify, defend and hold harmless Vendor Group in respect of the Purchaser Group's own Consequential Loss arising out of or in connection with the Order, in each case irrespective of any negligence or breach of duty (statutory or otherwise) of any member of Purchaser Group or of any member of the Vendor Group.

15.4 Without prejudice to Clause 16, Vendor shall maintain insurance cover against such liabilities as are referred to in Clauses 15.1 a) and b) and shall provide to Purchaser on demand valid certificates of insurance in respect thereof.

## 16.0 INSURANCE

In addition to the requirements of Clause 15.4, Vendor shall ensure that the following insurances are maintained by itself and its subcontractors throughout the duration of the Work being carried out under the Order, with insurers acceptable to Purchaser:

- a) Employer's Liability and Workers Compensation Insurance as appropriate to comply fully with all applicable laws but in any case, not less than £5 million sterling equivalent.
- b) Automobile Public and Passenger Liability Insurance placed with a reputable insurance company and having unlimited indemnity.
- c) General Liability Insurance having a limit of not less than £5 million sterling equivalent combined single



limit for any one occurrence covering all operations of the insured including without prejudice to the foregoing generally the contractual liabilities assumed herein. Vendor shall ensure that all such insurances waive all rights of subrogation against the Purchaser Group and that the Purchaser is included as an additional assured in respect of such insurances. The Vendor shall remit certificates evidencing said insurances. The Vendor shall ensure that at least thirty (30) days prior notice is given to the Purchaser of any proposed cancellation or material amendment of such insurances.

#### **17.0 FORCE MAJEURE**

- 17.1 Where either party is unable to perform the Order in the time specified by reason of Force Majeure, they shall be entitled to a reasonable extension of time for performance agreed by the Parties to take account of such Force Majeure.
- 17.2 Any right of Vendor to an extension of time to perform shall be without prejudice to Purchaser's right to terminate under Clause 13.
- 17.3 "Force Majeure" shall mean any acts of god, fire, explosion, flood, lightning, strike or labour dispute (other than a strike or labour dispute by personnel of Vendor Group), war, rebellion, riot or terrorism. Any delay caused by the inefficiency or late performance or fault of the Vendor Group shall not constitute an event of Force Majeure.
- 17.4 In any such event the party concerned should immediately notify the other party in writing and estimate how long these circumstances are likely to continue.
- 17.5 The party affected by Force Majeure shall take all reasonable steps to avoid further or consequential delay and to proceed with the due performance of the Order.
- 17.6 No compensation shall be payable by the Purchaser to the Vendor in respect of such Force Majeure.

#### **18.0 LIENS AND CLAIMS**

- 18.1 Vendor agrees to pay discharge and hold Purchaser harmless from all liens, claims (including legal fees and other expenses incidental thereto, whether groundless or not) judgements and awards which may arise out of or in connection with this Order. Vendor shall at Purchaser's request, furnish proof satisfactory to Purchaser that all such liens, claims, suits, judgements and awards have been satisfied or released. Purchaser shall also have the right to make payment direct to procure the release of any such lien or to any claimant and such payments shall be reimbursed by Vendor on demand or deducted from such payments outstanding.
- 18.2 Vendor agrees to waive, and shall procure that the Vendor Group agrees to waive, any right to exercise a lien, to make a claim or seek a judgement or award against the Work or any part thereof or against any property of the Purchaser Group at any time and acknowledges that its sole right in the event of any failure by Purchaser to perform any of its obligations under the Order is to seek financial relief in respect thereof.
- 18.3 Vendor shall if and when required by Purchaser (irrespective of whether Vendor shall have been paid for the Work or any part thereof) provide a certificate to the effect that the Vendor waives any lien on the Work or the right to make any claim or seek any judgement or award against the Work, or any part thereof.
- 18.4 In the event that title has passed to Purchaser, it shall at all times be entitled to enter with its representatives Vendor's premises or any place where the Work, including any goods forming part of the Work, is situated and take possession of the whole or any part of the Work including any goods forming part of the Work and remove the same.

#### **19.0 FREE ISSUE MATERIALS**

- 19.1 Where Purchaser provides free issue materials for incorporation in the Work, such materials shall remain the property of Purchaser but shall become at the risk



of Vendor and shall so remain until delivery to or acceptance of the Work by Purchaser in accordance with the provisions of the Order whichever shall be the later.

19.2 Vendor shall use such materials economically and any surplus shall be accounted for to Purchaser and disposed of or returned in accordance with Purchaser's instructions. Waste, loss of or damage to such materials arising from bad workmanship or failure of Vendor to maintain such materials in good order and condition shall be made good at Vendor's expense, replacements thereof to be equivalent quality and specification and subject to Purchaser's approval.

19.3 All such free issue materials provided by Purchaser shall be deemed to be in good condition when received by or on behalf of Vendor unless Vendor otherwise notifies the Purchaser within 48 hours of receipt of the same.

## **20.0 DRAWINGS (Where applicable)**

20.1 Vendor shall prepare at his own expense and submit to Purchaser such drawings as Purchaser may require. Purchaser shall have the right to approve all drawings in writing, but such approval shall not relieve Vendor of any of his responsibilities under the Order. Drawings shall not be departed from without Purchaser's written instructions.

## **21.0 PATENTS AND OTHER PROPRIETARY RIGHTS**

21.1 Title to, access to, copyright in, the right to possession of and free use of all intellectual property created under or arising in connection with the Work shall vest in Purchaser immediately upon date of commencement of the Work or creation of the article or documents or goods as applicable.

21.2 Purchaser shall have the sole right to seek patents on any item or idea arising in connection with the Work.

21.3 The Vendor warrants that the use of the Work, including any products and goods supplied as part of the Work, shall not constitute an infringement of

patents, trademarks, designs, trade secrets or any other intellectual property rights belonging to the Vendor Group or to any third parties.

21.4 Vendor shall indemnify and hold harmless Purchaser Group against any claims, liability, cost or expense (including legal costs and expenses) or damage whatsoever arising by reason of any infringement or alleged infringement of any letters patent, registered design, copyright or trade mark or any other intellectual property rights, directly or indirectly arising from the performance of the Work or caused by the delivery, use, sale, or any other form of disposal of any products or goods supplied as part of the Work, provided that this indemnity shall not apply in respect of any infringement arising as the result of the correct use by Vendor of a design supplied by Purchaser.

## **22.0 CONFIDENTIAL INFORMATION**

22.1 Vendor shall not disclose, and shall procure that the Vendor Group shall not disclose, in whole or in part, to any third party, without the Purchaser's consent, such information concerning or arising from the Order or the tendering thereof or the Purchaser Group's operations which may be considered as business or professional secrets ("Confidential Information"), except to the extent: (i) necessary for the performance of the Order; (ii) necessary to enforce or secure the Vendor's rights under the Order in legal proceedings or otherwise; (iii) necessary to comply with applicable laws and regulations; (iv) Confidential Information has become part of the public domain due to circumstances other than breach of these Conditions or the Order by the Vendor Group; or (v) Confidential Information was already in the possession of the Vendor before its receipt from the Purchaser.

22.2 This Clause shall survive the termination or expiration of the Order or the Work and shall remain in force for the period of 7 years from the date of signing of the Order.



## **23.0 PERSONAL INFORMATION - DEFINITION**

23.1 “Personal Information” means information provided by either party to the other in the course of performance under an Order that identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers, noting however that the Vendor’s business contact information is not by itself deemed to be Personal Information).

## **24.0 PERSONAL INFORMATION**

24.1 The Vendor and the Purchaser acknowledge and agree that, in the course of the Work being undertaken, either Party may receive or have access to Personal Information of the employees, agents and subcontractors of the other. The Purchaser and the Vendor shall comply with the terms and conditions set forth in these Conditions in its collection, receipt, transmission, storage, disposal, use and disclosure of such Personal Information and be responsible for the unauthorised collection, receipt, transmission, access, storage, disposal, use and disclosure of Personal Information under its control or in its possession by all Authorised Persons. Authorised Persons for the purposes of Clauses 24 and 25 shall mean in relation to the Vendor, any personnel of the Vendor Group and in relation to the Purchaser, any personnel of the Purchaser Group.

In recognition of the foregoing, both Parties shall:

(i) keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorised access, use or disclosure; (ii) use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the Order and these Conditions, and not use, sell, rent, transfer, distribute, or otherwise

disclose or make available Personal Information for its own purposes or for the benefit of anyone other than the other Party, in each case, without that Party’s prior written consent; and (iii) not, directly or indirectly, disclose Personal Information to any person other than its Authorised Persons who have a need to know the Personal Information, without express written consent from the other Party (unless and to the extent required by Government authorities or to the extent expressly required by applicable law in which case the relevant Party shall use reasonable efforts to notify the other Party before such disclosure or as soon thereafter as reasonably possible). Each Party shall (a) be responsible for and remain liable to the other Party for the actions and omissions of its agents and subcontractors concerning the treatment of such Personal Information as if they were the relevant Party’s own actions and omissions; and (b) require its agents and subcontractors that have access to Personal Information to execute a written agreement agreeing to comply with the terms and conditions of this Agreement relating to the treatment of Personal Information.

## **25.0 PERSONAL INFORMATION – COMPLIANCE WITH DATA PROTECTION LAWS**

25.1 Purchaser and Vendor each represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable privacy and data protection laws, regulations and directives.

25.2 At a minimum, both Parties’ safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorised Persons who have a need to know the Personal Information; (ii) securing business facilities, data centres, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii)



implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; and (vi) maintaining retention policies and procedures to ensure that Personal Information is deleted after an appropriate time, unless otherwise required by applicable law.

25.3 The Vendor shall ensure that members of the Vendor Group also comply with the provisions of Clauses 24 and 25.

## **26.0 CONTRACT WORKER AND IR35 (where applicable)**

For the purposes of this Clause 26, the following terms shall be defined as below:

- “Contract Worker” shall mean an individual supplied by the Vendor to support the performance of the Work.
- “Contingent Worker” shall mean an individual which the Vendor proposes to supply to support the performance of the Work and for which the Purchaser would be deemed to be a ‘client’ for the purposes of Chapter 10 of Part 2 of ITEPA.
- Deemed Employee: shall mean a Contract Worker whose engagement with the Purchaser falls within the OPW Rules.
- “Determination” shall mean a determination as to whether or not a Contract Worker is or will be a Deemed Employee.
- “ITEPA” shall mean the Income Tax (Earnings and Pensions) Act 2003.
- “OPW Rules” shall mean the rules contained in Chapter 10 of Part 2 of ITEPA.
- “Tax Statute” means any directive, statute, enactment, law or regulation wherever enacted or issued, coming into force or entered into providing for or imposing any Tax and shall include orders,

regulations, instruments, by-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same.

- "Tax" or “Taxes” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

26.1 The Vendor shall, and shall procure that each Contract Worker which is directly engaged or via an Intermediary (as defined by Chapter 10 of Part 2 of ITEPA) shall, before the commencement of an Order, give the Purchaser all such information and documentation that it may reasonably request or require in order to enable it to consider the application of this Clause 26 to anything to be done by the Vendor or any of the Contract Workers pursuant to the Order and the Vendor shall, and shall procure that each Contract Worker shall, promptly inform the Purchaser of any material change to any information or documentation previously provided in compliance with this clause and shall also promptly provide any other information or documentation that it considers (or ought reasonably to consider) to be materially relevant to enable the Purchaser to make a Determination.

26.2 To the extent that the Vendor demonstrates to the Purchaser’s satisfaction that the Contract Worker is treated by the Vendor as its employee for all income tax, employee and employer National Insurance contributions and (if applicable) apprenticeship levy purposes, the Vendor shall:

- a) comply (and remain compliant) with all its obligations under any





Tax Statute, including paying and/or accounting to HMRC for the correct amount of income tax, national insurance contributions (both employer and employee) and, if applicable, apprenticeship levy on all remuneration payable to that Contract Worker; and

- b) save, relieve and indemnify and hold harmless the Purchaser and each member of the Purchaser Group (net of Taxes) against any claims for, and undertakes to pay an amount equivalent to, any Taxes, deductions, levies, assessments or any associated costs, expenses, penalties or interest which may be brought against the Purchaser or any member of the Purchaser Group at any time in connection with the provision of services to the Purchaser by that Contract Worker pursuant to the Order or as a result of any failure by the Vendor to comply with its obligations under this Clause 26.

26.3 To the extent that the Vendor does not demonstrate to the Purchaser's satisfaction that the Contract Worker is treated by the Vendor as its employee for all income tax, employee and employer National Insurance contributions and (if applicable) apprenticeship levy purposes, the Purchaser shall be entitled to consider whether the OPW Rules apply to the provision of services by that Contract Worker and, to the extent that they do, to make a Determination.

26.4 Where a Determination is made pursuant to Clause 26.3, Purchaser shall issue to the Vendor and the Contract Worker in question the Determination and, where any such Contract Worker is to be regarded as a Deemed Employee, subject to Clause 26.5, the Vendor shall:

- a) be required to deduct from the remuneration payable to such Deemed Employee and relating to such Deemed Employee's provision of services to the Purchaser the appropriate

amount of income tax and employee national insurance contributions and to pay them to HMRC, together with the appropriate amount of employer national insurance contributions and, if applicable, apprenticeship levy, in connection with such deemed employment; and

- b) save, relieve, indemnify and hold harmless the Purchaser and each member of the Purchaser Group (net of Taxes) against any claims for, and undertakes to pay an amount equivalent to, any Taxes, deductions, levies, assessments or any associated costs, expenses, penalties or interest which may be brought against the Purchaser or any member of the Purchaser Group at any time in connection with the OPW Rules or as a result of any failure by the Vendor to comply with its obligations under this Clause 26.

26.5 In the event that the Contract Worker and/or the Vendor disagrees with the Determination, they shall be entitled to make written representations to the Purchaser that it has reached the wrong conclusion in its Determination. Provided that the Purchaser receives such representations at any time before the Vendor receives the final payment of the fees for the Contract Worker in question, the Purchaser shall or shall procure, having regard to the representations made to it or the relevant member of the Purchaser Group and within forty five (45) working days of such representations being received, inform the relevant Contract Worker (and/or, as the case may be, the Vendor) whether or not the original Determination stands together with the reasons for arriving at that conclusion. In the event that the Purchaser reaches a different conclusion, the Purchaser shall provide the relevant Contract Worker (and/or, as the case may be, the Vendor) with a new Determination and confirm the original Determination is withdrawn.



26.6 The Vendor shall, and shall procure that each Contract Worker shall, promptly upon Purchaser's request, give Purchaser all such information and documentation as may be reasonably requested from time to time to enable the Purchaser to comply with its obligations (including, for the avoidance of doubt, the obligations set out in the OPW Rules including the requirement to keep the Determination under review) and to verify that the Vendor has complied (and remains compliant) with its obligations under this Clause 26.

26.7 The Vendor shall not provide any Contingent Worker for the performance and/or completion of the Work who is engaged by the Vendor through an Intermediary, without the prior written approval of the Purchaser, and such approval may be subject to such terms and conditions as the Purchaser shall reasonably require. The Vendor will provide all relevant information for the Purchaser to make a Status Determination in this regard. The terms "Intermediary" and "Status Determination" shall be as defined by Chapter 10 of Part 2 of ITEPA.

#### **27.0 TAXES**

"Tax" or "Taxes" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

27.1 The Vendor shall be responsible for all Taxes, fees and the like related to the performance of the Work and any payment made hereunder (other than VAT properly chargeable in relation to a taxable supply made by the Vendor hereunder and which the Vendor is legally obliged to account for to the relevant tax authority under applicable law) and the Vendor shall indemnify the Purchaser Group in respect of all claims, loss, liabilities, damages and associated costs and expenses which may be incurred in connection therewith.

27.2 In the event that any sum paid by the Vendor pursuant to clause 27.1 is required by law to be brought into charge to Tax, the Vendor shall pay such additional amounts as shall be required to ensure that the net amount received and retained by the relevant member of the Purchaser Group (after payment of the Tax so charged or required to be charged) equals the full amount that would otherwise be payable under clause 27.2 and, in applying this clause 27.2, no account shall be taken of the extent to which any liability for Tax may be mitigated or offset by any tax relief so that where any such tax relief is available, the additional amount payable under this clause 27.2 shall be the amount which would have been payable in the absence of such availability.

#### **28.0 LAW AND LANGUAGE**

28.1 The Order and any disputes or claims arising out of or in connection with it or its subject matter (including any question regarding its existence, validity or termination, and any non-contractual disputes and claims) shall be construed and shall take effect in all respects in accordance with the laws of England and Wales and the Parties hereby submit to the jurisdiction of the English Courts.

28.2 All documentation provided by Vendor or by the Vendor Group in connection with this Order shall be in the English language.

#### **29.0 NOTICES**

29.1 Notices shall be given in writing and delivered by hand or sent by electronic mail delivery or pre-paid first class recorded delivery post or where applicable by pre-paid airmail post to the address of the Parties stated respectively on the Order or to any address subsequently notified in writing by one party to the other party in accordance with Clause 29. Notices to Purchaser to be specifically marked for the attention of the "Procurement Manager". Notices to the Vendor to be specifically marked for the attention of the person set out in the Purchase Order.



- 29.2 Notices served under these Conditions shall be deemed to have been received by the addressee (i) at the time of delivery of the notice at the proper address, if delivered by hand, or if this time falls outside business hours in the place of receipt, when business hours resume; or (ii) at the time of transmission, in respect of notices served by electronic mail, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 29, business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt; or (iii) on the second Business Day after posting from the United Kingdom to an address within the United Kingdom, if sent by first class recorded delivery post or on the fifth Business Day after posting by pre-paid airmail from outside the United Kingdom or posting to an address outside the United Kingdom.
- 29.3 Clause 29.3 does not apply to the service of any proceedings of any documents in any legal action or where applicable, any arbitration or other method of dispute resolution.

### **30.0 ENTIRETY**

- 30.1 The Order, these Conditions, and documents made a part thereof in the Purchase Order by express reference as forming part of the Order, constitute the entire agreement between the Parties and supersede all prior agreements and understandings written or oral and shall in any event supersede any terms and conditions that may be contained in Vendor's delivery documentation or other documentation.
- 30.2 Each Party acknowledges that it has not entered into this Order in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Order, except in the case of fraudulent misrepresentation. No Party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Order.

### **31.0 ENTIRETY**

- 31.1 None of the provisions of this Order shall be considered waived by Purchaser unless such waiver is given by Purchaser in writing.

### **32.0 CONTRACTS (RIGHTS OF THIRD PARTIES ACT)**

- 32.1 Subject to Clause 32.2, the Parties intend that no provisions of the Order shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the Act") confer any benefits on, or be enforceable by, any person who is not a Party to the Order.
- 32.2 For the purposes of this Clause 32, "Third Party" shall mean any member of the Purchaser Group (other than the Purchaser) or Vendor Group (other than the Vendor).
- 32.3 Subject to the remaining provisions of the Order, Clauses 15, 21.4, 26 and 27 are intended to be enforceable by a Third Party by virtue of the Act.
- 32.4 Notwithstanding Clause 32.3, the Order may be rescinded, amended or varied by the Parties to the Order without notice to or the consent of any Third Party even if, as a result, that Third Party's right to enforce a term of this Order may be varied or extinguished.

### **33. SURVIVAL**

- 33.1 The rights and obligations of the Parties detailed in the Conditions or in the Order which by their nature survive termination or expiry of the Order or the Work, including Clauses 7 (Defects and Warranty), 12 (Termination for Default or Insolvency), 13 (Termination for Purchaser's Convenience), 14 (Title and Risk), 15 (Indemnities), 21 (Patents and Other Proprietary Rights), 22 (Confidential Information), 26 (Tax Withholding and IR35 (where applicable)), 27 (Taxes) and 28 (Law and Language) shall remain in full force and effect after such termination or expiry.