

1. Interpretation

1.1 Definitions:

ADR notice: has the meaning given in clause 31.1(c).

Affected Party: has the meaning given in clause 19.2.

Applicable Laws: all applicable laws, statutes, regulations from time to time in force.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which the Company is subject, which relates to the protection of personal data.

Business Day: a day, other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Belfast are open for business.

Business Hours: the period from 8.30 am to 4.30 pm on any Business Day.

Change Order: has the meaning given in clause 9.5.

Charges: the sums payable for the Services, as set out in the Order.

Commencement Date: the date of this agreement.

Company: Drilling and Pumping Supplies Limited (company number NI025876) whose registered office is at 8-10 Balloo Avenue, Bangor, County Down, Northern Ireland, BT19 7QT.

Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company to the Customer and used directly or indirectly in the supply of the Services including any such items specified in an Order but excluding any such items which are the subject of a

separate agreement between the parties under which title passes to the Customer.

Company Personal Data: any personal data which the Company processes in connection with this agreement, in the capacity of a controller.

Confidential Information: any information of a confidential nature concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

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

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Company in connection with the Services, including the items provided pursuant to clause 9.3(d).

Customer Personal Data: any personal data which the Company processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

Deliverables: any output of the Services to be provided by the Company to the Customer as specified in an Order.

Delivery: completion of delivery of Products specified in an Order in accordance with clause 5.2 or clause 5.5(a).

Delivery Date: the date specified for delivery of Products specified in an Order in accordance with clause 3.3.

Delivery Location: the location specified in the Order.

Dispute: has the meaning given in clause 31.1.

Force Majeure Event: has the meaning given in clause 19.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: the Customer's business policies as amended by notification to the Company from time to time.

Milestones: a date by which a part of the Services is to be completed if set out in an Order.

Order: an order for Products or Services submitted by the Customer in accordance with clause 3.

Order Number: the reference number to be applied to an Order by the Company in accordance with clause 3.4.

Products: the products set out in the Order and, where the context requires, the Products ordered by and supplied to the Customer.

Product Prices: the prices of the Products as determined in accordance with clause 8.1 and **Product Price** means the

price of an individual Product as determined in accordance with that clause.

Specification: the specification of the Products set out in the Order.

month: a calendar month.

Services: the services as set out in the Order, including services which are incidental or ancillary to such services.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

year: any period of 12 consecutive months from 1 January to the following 31 December.

Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

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

The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Supply of Products

2.1 The Company shall supply and the Customer shall purchase such quantities of Products as the Customer may order under clause 3 in accordance with these terms and conditions.

3. Orders

3.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Products or Services on the terms of this agreement, which the Company shall be free to accept or decline at its absolute discretion.

3.2 No Order shall be deemed to be final and/or accepted by the Company until it issues a sales order or other written confirmation from time to time.

3.3 Each Order shall:

- (a) be given in writing or, if given orally, shall be confirmed in writing within two Business Days;
- (b) specify the type and quantity of Products ordered and the Products' code numbers or the type of Services; and
- (c) specify: the estimated Delivery Date (if available). If the estimated Delivery Date is to be specified after the placing of an Order, the Customer shall give the Company reasonable advance notice of the relevant information; or the date on which the Services shall be provided.

3.4 The Company shall assign an Order Number to each Order it accepts and notify those Order Numbers to the Customer together with the Delivery Date or date on which the Products specified in an Order will be ready for dispatch. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.

3.5 The Customer may within 2 days of placing an Order amend or cancel an Order by written notice to the Company. If the Customer amends or cancels an Order, its liability to the Company shall be limited to payment to the Company of all costs reasonably incurred by the Company in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, except that the Customer shall have no liability to the Company where the amendment or cancellation results from the Company's failure to comply with its obligations under this agreement.

4. Manufacture, quality and packing

4.1 The Company shall manufacture, pack and supply the Products in accordance with generally accepted industry standards and practices that are applicable.

4.2 The Products supplied to the Customer by the Company under this agreement shall:

- (a) conform to the Specification; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Company.

5. Delivery

5.1 Where applicable, the Customer shall collect the Products specified in each Order from the Delivery Location on the Delivery Date.

5.2 Delivery is completed on the completion of unloading of the Order at the Delivery Location.

5.3 The Company may deliver Orders by instalments, which may be invoiced and paid for separately. References in these terms and conditions to Orders shall, where applicable, be read as references to instalments.

5.4 Delays in the delivery of an Order shall **not** entitle the

Customer to:

- (a) refuse to take delivery of the Order; or
- (b) claim damages; or
- (c) terminate this agreement.

The Company shall have no liability for any failure or delay in delivering an Order to the extent that any such failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.

5.5 If the Customer fails to take delivery of an Order in accordance with these terms and conditions, then, except where that failure or delay is caused by the Company's failure to comply with its obligations under this agreement or a Force Majeure Event:

- (a) delivery of the Order shall be deemed to have been completed at 9.00 am on the Delivery Date; and
- (b) the Company shall store the Order until the Customer takes possession of the Order, and charge the Customer for all storage and related costs and expenses (including insurance).

5.6 Each delivery of Products shall be accompanied by a delivery note from the Company showing the Order Number, the type and quantity of Products included in the Order, including the code numbers of the Products.

6. Acceptance and defective products

6.1 The Customer may reject any Products delivered to it that do not comply with clause 4.2, provided that:

- (a) notice of rejection is given to the Company:
 - (i) in the case of a defect that is apparent on normal visual inspection, within five Business Days of Delivery;
 - (ii) in the case of a latent defect, within a reasonable

time of the latent defect having become apparent;

(iii) in the case of damage in transit, within 24 hours of the Deliver Date; and

- (b) none of the events listed in clause 6.3 apply.

If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted the Products.

6.3 The Company shall not be liable for the Products' failure to comply with the warranty set out in clause 4.2 in any of the following events:

- (a) the Customer makes any further use of those Products after giving notice in accordance with clause 6.1;
- (b) the defect arises because the Customer failed to follow the Company's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs those Products without the written consent of the Company;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Products differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

If the Customer rejects Products under clause 6.1 then the Customer shall be entitled to:

- (a) require the Company to repair or replace the rejected Products; or

- (b) require the Company to repay the price of the rejected Products in full.

Once the Company has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Products' failure to comply with clause 4.2.

- 6.5 The terms of this agreement shall apply to any repaired or replacement Products supplied by the Company.

7. Title and risk

- 7.1 Risk in Products shall pass to the Customer on Delivery.

- 7.2 Title to Products shall not pass to the Customer until:

- (a) the Company receives payment in full (in cash or cleared funds) for the Products and all other sums that are or that become due to the Company from the Customer for sales of Products, in which case title to these Products shall pass at the time of payment; or
- (b) the Customer resells those Products, in which case title to those Products shall pass to the Customer at the time specified in clause 7.4.

- 7.3 Until title to Products has passed to the Customer, the Customer shall:

- (a) store those Products separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Products;
- (c) maintain those Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Company. The Customer shall obtain an endorsement of the Company's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On

request the Customer shall allow the Company to inspect the insurance policy; and

- (d) give the Company such information as the Company may reasonably require from time to time relating to:

- (i) the Products; and
- (ii) the ongoing financial position of the Customer.

Subject to clause 7.5, the Customer may resell or use Products in the ordinary course of its business (but not otherwise) before the Company receives payment for the Products. However, if the Customer resells the Products before that time:

- (a) it does so as principal and not as the Company's agent; and
- (b) title to those Products shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

At any time before title to the Products passes to the Customer, the Company may:

- (a) by notice in writing, terminate the Customer's right under clause 7.4 to resell the Products or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all the Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.

Product prices

The Product Prices shall be the prices set out in the Company's price list or quotation. The Company reserves the right to increase the Product Prices as indicated in the price list/quotation or as otherwise notified in writing by the Company.

8.2 The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company any additional amounts in respect of VAT as are chargeable on a supply of Products.

9. Supply of Services

9.1 The Company shall use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.

9.2 The Company shall use reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time for performance by the Company shall not be of the essence of this agreement.

9.3 The Customer shall:

- (a) co-operate with the Company in all matters relating to the Services;
- (b) appoint a manager for the Services, such person as identified in writing by the Customer. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
- (c) provide, for the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Company including any such access as is specified;
- (d) provide to the Company in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required by the Company in connection with the Services and ensure that they are accurate and complete;

(e) inform the Company of all health and safety and security requirements that apply at any of the Customer's premises. If the Customer wishes to make a change to those requirements which will materially affect provision of the Services, it can only do so via the change control procedure set out in clauses 9.5 to 9.9;

(f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements;

(g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Company to provide the Services, including in relation to the installation of the Company's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;

(h) keep, maintain and insure the Company's Equipment in good condition and in accordance with the Company's instructions from time to time and shall not dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation.

9.4 If the Company's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Company shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

9.5 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the

proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Company's existing charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this agreement.

9.6 If the Company wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

9.7 If the Customer wishes to make a change to the Services:

- (a) it shall notify the Company and provide as much detail as the Company reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) the Company shall, as soon as reasonably practicable after receiving the information at clause 9.7(a), provide a draft Change Order to the Customer.

9.8 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 31 (Multi-tiered dispute resolution procedure).

9.9 The Company may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 9.7 on a time and materials basis at the Company's daily rates specified by the Company.

10. Non-solicitation

10.1 The Customer shall not, without the prior written consent of the Company, at any time from the date of this agreement to the expiry of 24 months after the termination or expiry of this agreement, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

10.2 Any consent given by the Company in accordance with clause 10.1 shall be subject to the Customer paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

11. Charges and payment

11.1 The Company shall be entitled to invoice the Customer for each Order on or at any time after Delivery of Products or provision of Services, as the case may be. Each invoice shall quote the relevant Order Numbers.

11.2 The Customer shall pay invoices in full and in cleared funds within 30 days of the invoice date or as otherwise agreed by the parties. Payment shall be made to the bank account nominated in writing by the Company.

11.3 If a party fails to make a payment due to the other party under this agreement by the due date, then, without limiting the other party's remedies under these terms and conditions, the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.4 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Company in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Company shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Company, the dispute shall be resolved in accordance with clause 31 (Multi-tiered dispute resolution procedure). Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 11.2.

11.5 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12. Intellectual property rights

12.1 In relation to the Deliverables:

- (a) the Company and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Company grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 12.1(b):
 - (i) to its customers; and
 - (ii) subject to their entering into appropriate confidentiality undertakings, to third parties for the purpose of the Customer's receipt of services

similar to the Services.

12.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

12.3 The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Company, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party OR any rights of third parties to the extent that infringement results from copying; and
- (b) shall indemnify the Company in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim brought against the Company, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

12.4 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause 12, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity;
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

13. Product recall

- 13.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the market (**Recall Notice**) it shall immediately notify the Company in writing enclosing a copy of the Recall Notice.
- 13.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Company and only then in strict compliance with the Company's instructions about the process of implementing the withdrawal.

14. Data protection

- 14.1 For the purposes of this clause 14, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR or EU GDPR (as applicable).
- 14.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 14.3 The parties have determined that for the purposes of Applicable Data Protection Laws the Company shall process the personal data as processor on behalf of the Customer.
- 14.4 Should the determination in clause 14.3 change, the parties shall use all reasonable endeavours make any changes that are necessary to this clause 14.
- 14.5 The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Company in connection with the processing of Company Personal Data, provided these are in compliance with the then-current version of the Company's privacy policy available at <https://dpswater.com/privacy/> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.
- 14.6 Without prejudice to clause 14.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Company Personal Data and Customer Personal Data to the Company for the duration and purposes of this agreement.

14.7 Without prejudice to clause 14.2, the Company shall, in relation to Customer Personal data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer unless the Company is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Company is relying on Applicable Laws as the basis for processing Customer Personal Data, the Company shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer on important grounds of public interest. The Company shall inform the Customer if, in the opinion of the Company, the instructions of the Customer infringe Applicable Data Protection Laws;
- (b) implement technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Company to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Company), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the

Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Company is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 14.7(f), Customer Personal Data shall be considered deleted where it is put beyond further use by the Company; and
- (g) maintain records to demonstrate its compliance with this clause 14.

14.8

The Customer provides its prior, general authorisation for the Company to:

- (a) appoint processors to process the Customer Personal Data, provided that the Company:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Company in this clause 14;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Company; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Company's reasonable

satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Company for any losses, damages, costs (including legal fees) and expenses suffered by the Company in accommodating the objection.

- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Company shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Company, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

14.9 Either party may, at any time on not less than 30 days' notice, revise this clause 14 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

14.10 The Company's liability for losses arising from breaches of this clause 14 is as set out in clause 16.6(b).

15. Confidentiality

15.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 15.2.

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

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3

No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

16.

Limitation of liability

16.1

The Company has obtained insurance cover in respect of its own legal liability for individual claims not exceeding €6,500,000 in any one event and in aggregate. The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

16.2

References to liability in this clause 16 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

16.3

Nothing in this this clause 16 shall limit the Customer's payment obligations under this agreement.

16.4

Nothing in this agreement shall limit the Customer's liability under the following clause 12.3 (IPR indemnities).

16.5

Nothing in this agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence; and
- (b) fraud or fraudulent misrepresentation.

16.6 Subject to clause 16.7, the Company's total liability to the Customer:

- (a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed €2,000,000 for any one event or series of connected events;
- (b) for loss arising from the Company's failure to comply with its data processing obligations under clause 14 (Data protection) shall not exceed £100,000; and
- (c) for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed the amount invoiced by the Company pursuant to clause 11 in the previous 12 months.

16.7 Subject to clause 16.3 (No limitation on the customer's payment obligations), clause 16.4 (liability under identified clauses) and clause 16.5 (Liabilities which cannot legally be limited), this clause 16.7 specifies the types of losses that are excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

16.8 The Company has given commitments as to compliance of the Services with relevant specifications in clause 9 (Company's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of

Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

16.9 The Company has given commitments as to compliance of the Products with relevant specifications in clause 4.2. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this agreement.

16.10 Unless the Customer notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

17. Termination

17.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 103 of the Insolvency (Northern Ireland) Order

1989 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or

enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1(c) to clause 17.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

Without affecting any other right or remedy available to it, the Company may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Customer.

18. Obligations on termination and survival

18.1 Obligations on termination or expiry

On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Company's

Equipment. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of the Company's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

- (c) the Company shall on request return any of the Customer Materials not used up in the provision of the Services.

18.2 Survival

- (a) On termination or expiry of this agreement, the following clauses shall continue in force: clause 10 (Non-solicitation), clause 12 (Intellectual property rights), clause 15 (Confidentiality), clause 16 (Limitation of liability), clause 18 (Consequences of termination), clause 22 (Waiver), clause 24 (Severance), clause 26 (Conflict), clause 31 (Multi-tiered dispute resolution procedure), clause 32 (Governing law) and clause 33 (Jurisdiction).
- (b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

19. Force majeure

19.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of

diplomatic relations;

- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) interruption or failure of utility service.

19.2 Provided it has complied with clause 19.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

20. Assignment and other dealings

20.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

20.2 The Company may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

21. Variation

Subject to clauses 9.5 to 9.9, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Waiver

22.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

22.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24. Severance

24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

24.2 If any provision or part-provision of this agreement is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. Entire agreement

25.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

26. Conflict

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

27. No partnership or agency

27.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party,

or authorise any party to make or enter into any commitments for or on behalf of any other party.

27.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28. Third party rights

28.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

29. Notices

29.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in an Order.

29.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause **29.2(c)**, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

29.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where

applicable, any arbitration or other method of dispute resolution.

30. Counterparts

30.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

30.2 No counterpart shall be effective until each party has executed at least one counterpart.

31. Multi-tiered dispute resolution procedure

31.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Contract Manager of the Customer and Contract Manager of the Company shall attempt in good faith to resolve the Dispute;
- (b) if the Contract Manager of the Customer and Contract Manager of the Company are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director of the Customer and a director of the Company who shall attempt in good faith to resolve it; and
- (c) if a director of the Customer and a director of the Company are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation

Procedure. Unless otherwise agreed between the 32. parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

31.2 The commencement of mediation shall not prevent the 33. parties commencing or continuing court proceedings in relation to the Dispute under clause 33 (Jurisdiction) which clause shall apply at all times.

Governing law

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

Jurisdiction

Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.