Nimans Framework Purchasing Agreement

Part A - Particulars

Supplier	**Supplier Name**	Click here to enter text.		
	Registered Number	Click here to enter text.		
	Address	Click here to enter text.		
		Click here to enter text.		
		Click here to enter text.	**Postcode**	Click here to enter text
Supplier's Representative	**Name**	Click here to enter text.		
	Title/Position	Click here to enter text.		
	Phone	Click here to enter text.		
	Email	Click here to enter text.		

Customer	**Customer Name**	Nimans Limited		
	Registered Number	1876587		
	Address	Agecroft Road		
		Pendlebury, Swinton		
		Manchester	**Postcode**	M27 8SB
Customer's Representative	**Name**	Click here to enter text.		
	Title/Position	Click here to enter text.		
	Phone	Click here to enter text.		
	Email	Click here to enter text.		

Contract Particulars	**Commencement Date**	Click here to enter a date.
	Initial Term	12 months
	Extended Term	6 months
	Notice	3 months
	Territory	England and Wales

By signing below the Supplier agrees and accepts that: (1) the Supplier has the right to enter into the Contract; and (2) the Supplier has fully understood the terms of the Contract and agrees to be bound by the terms contained therein.

Accepted for and on behalf of the Supplier	**Accepted for and on behalf of the Customer**
Signature ……..	**Signature** ……..
Name ……..	**Name** ……..
Date ……..	**Date** ……..

Part B – Commercial Terms

Clause No	Clause Heading	Agreed Amendment

Part C – Legal Terms

BACKGROUND

A. The Customer agrees to purchase and the Supplier agrees to supply the Goods and/or Services upon the terms of this Contract.

1. **Definitions and interpretation**

1.1 In these legal terms unless the context otherwise requires the following terms have the following meanings:

Affected Party	has the meaning given in clause 26;
Applicable Law	in any jurisdiction in which the Goods and/or Services are being supplied and/or performed, any and all applicable laws, regulations and industry standards or guidance (including any applicable British Standard) and any applicable and binding judgment of a relevant court of law;
Business Day	a day other than a Saturday, Sunday or public holiday in England;
Commercial Terms	the commercial terms agreed between the Customer and Supplier for the purchase of the Goods and/or Services as set out in Part B or otherwise agreed in writing between the parties from time to time;
Commencement Date	the date set out as such in Part A or, if no such date is specified, the date of signature of this Contract;
Confidential Information	has the meaning given in clause 19;
Contract	the contract between the Customer and the Supplier for the purchase of Goods and/or Services incorporating the Particulars (Part A), the Commercial Terms (Part B) and the Legal Terms (Part C);
Control	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company and the expression Change of Control shall be construed accordingly;
Delivery	completion of delivery of an Order in respect of Goods in accordance with clause 5.2.2;
Delivery Date	the date for delivery of the Goods and/or the performance of the Services specified in an Order;
Delivery Location	the location specified for delivery of the Goods and/or performance of the Services specified in an Order;
Force Majeure Event	any event beyond the reasonable control of a party which that party is unable reasonably to prevent or avoid;
Good Industry Practice	the use of standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of similar services to an entity of a similar size and nature as the Customer Group under the same or similar circumstances;
Goods	the Goods specified in the latest version of the Supplier's price list;
Group	for a party, all group undertakings of that party (**"group undertaking"** having the meaning given to it under section 1161(5) of the Companies Act 2006) and any reference to a **"Group Company"** means any such group undertaking;
Intellectual Property Rights	patents, copyright, trade marks, business names and domain names, goodwill and the right to sue for passing off, 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;
Month	a calendar month;
Order	a purchase order for Goods and/or Services placed by the Customer in writing with the Supplier for the supply of the Goods and/or provision of the Services detailing the Delivery Date, time for delivery and Delivery Location;
Order Number	the number stated on an Order;
Price	the prices which the Customer has agreed to pay the Supplier for the Goods and/or the Services as

	specified in the latest version of the Supplier's price list;
Quarter	each period of three (3) months during a Year ending 31 March, 30 June, 30 September and 31 December or such shorter period from the date that this Contract commences to the first of the foregoing dates which occurs and, on the termination of this Contract (howsoever arising) such shorter period from the last of the foregoing dates to have occurred until the date of such termination;
Services	the services more specifically described in the latest version of the Supplier's price list;
Specification	the quality and/or description of the Goods and/or Services as specified in the latest version of the Supplier's price list and/or quotation and/or scope of works, as the case may be;
Supplier Manual	the supplier induction forms (Part 1, 2 and 3) provided by the Customer to the Supplier as amended by the Customer from time to time;
Supplier Personnel	the personnel including subcontractors engaged by the Supplier in the provision of the Services;
Term	the term of this Contract, as determined in accordance with clause 23;
VAT	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;
Year	a period of 12 months from and including the Commencement Date or an anniversary of the Commencement Date provided that, where this Contract is terminated part way through such a 12 month period, a reference to a Year shall include the period from the end of the last Year completed until the date of termination.

1.1 References to **"clauses"** and **"Parts"** are to the clauses and Parts of this Contract. Clause and Part headings shall not affect the interpretation of this Contract. The Parts form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to **"this Contract"** includes the Parts.

1.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.4 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.5 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.6 Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the generality of the related general words.

2. Contract Formation

2.1 With effect from the Commencement Date, the Customer engages the Supplier and the Supplier accepts its engagement by the Customer to provide the Goods and the Services on the terms of this Contract.

2.2 During the Term, the Customer may place Orders with the Supplier in accordance with clause 3 and the Supplier shall supply the Goods and Services which the Customer orders in accordance with the terms and conditions of this Contract.

2.3 The Supplier acknowledges that, unless agreed otherwise in the Commercial Terms, it is not being exclusively appointed to supply the Goods and/or provide the Services for the Customer and that the Customer is free to obtain similar or identical goods or similar or identical services from any other third party provider.

2.4 The Customer may purchase the Goods and/or Services for its own use or for the purpose of reselling the Goods and/or Services in the Territory.

2.5 If there is an inconsistency between the provisions of this Contract and the provisions of an Order, the Particulars (Part A) the Commercial Terms (Part B), or the Supplier Manual the following order of decreasing precedence shall apply:

2.5.1 the relevant Order;

2.5.2 the Commercial Terms (Part B);

2.5.3 the Particulars (Part A)

2.5.4 the Supplier Manual; and

2.5.5 these Legal Terms (Part C).

2.6 The relationship of the Supplier to the Customer shall be that of independent contractor and nothing contained in this Contract shall create a relationship of employer and employee, principal and agent or partnership between the Customer and the Supplier.

2.7 Neither party shall pledge the credit of the other or sign any document, enter into any agreement or make any promise on behalf of the other or in any way indicate that it is entitled to do so without the prior written consent of the other party.

3. **Orders**

3.1 During the Term the Customer may place Orders with the Supplier.

3.2 The Supplier shall supply Goods and Services in accordance with the Customer's Orders.

3.3 Each party shall use the relevant Order Number in all correspondence relating to the Order.

3.4 The Customer may at any time prior to despatch of the Goods or performance of the Services amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Contract the Customer shall have no liability to the Supplier in respect of it.

4. **Quality and packing of the Goods**

4.1 The Supplier warrants that the Goods supplied to the Customer by the Supplier under this Contract:

4.1.1 correspond with their Specification and any sample provided to the Customer by or on behalf of the Supplier as applicable;

4.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

4.1.3 are free from defects in design, material and workmanship and shall remain so for 2 years after Delivery; and

4.1.4 are designed, manufactured, packaged, stored, supplied and delivered in accordance with:

4.1.4.1 all Applicable Law;

4.1.4.2 Good Industry Practice; and

4.1.4.3 the Customer's reasonable instructions from time to time.

4.2 If requested by the Customer, the Supplier shall provide test certificates and certificates of conformity in relation to the Goods.

4.3 The Supplier shall assign to the Customer any assignable manufacturer's warranty or other guarantee applicable to the Goods or any of them to the extent permitted. If the Supplier becomes insolvent, any such warranties and guarantees shall be deemed to have been assigned immediately prior to the onset of insolvency.

4.4 The Supplier shall ensure that the Goods are properly packed, labelled and secured in accordance with the Supplier Manual and in such manner as to enable them to reach their destination in good condition.

5. **Delivery and acceptance of the Goods**

5.1 The Supplier shall comply with the delivery requirements and procedures set out in the Supplier Manual.

5.2 Unless stated otherwise in the Supplier Manual:

5.2.1 the Supplier shall deliver the Goods specified in each Order to the Delivery Location at the time set out in such Order (or where no time is specified between 09:00 and 17:00) on the Delivery Date; and

5.2.2 Delivery of the Goods specified in an Order shall be complete on the completion of unloading of those Goods at the Delivery Location and once signed for by a member of the Customer's personnel.

5.3 The Supplier shall not deliver Goods by instalments except with the Customer's prior written consent. Where the Goods specified in an Order are to be delivered by instalments, they may be invoiced and paid for separately. Upon any default or breach by the Supplier in respect of any instalment, the Customer may at its option:

5.3.1 cancel any other instalment(s) and/or treat this Contract as repudiated; or

5.3.2 waive the default or breach and treat this Contract as continuing provided that such waiver shall in no way affect the Customer's right to exercise its rights under clause 10 or any of its other rights or remedies under this Contract or at common law.

5.4 The Supplier shall notify the Customer immediately in writing if delivery of the Goods is, or is likely to be, delayed the reason for such delay and the timescales for delivery. The Supplier shall use all reasonable endeavours to avoid or minimise any delay. Time shall be of the essence in relation to the Delivery Date.

5.5 The Supplier shall provide the Customer with:

5.5.1 all relevant instructions for the safe and proper use of the Goods; and

5.5.2 information about any health and safety risks posed by the Goods (including any health risks which may arise during handling, storage, use or disposal of the Goods) and the steps that should be taken to minimise any such risk.

5.6 Each delivery of the Goods shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the Delivery Location, the Supplier's part code/stock keeping unit, the description and quantity of Goods, the number of pallets or cartons in the delivery and, in the case of an Order being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.7 The Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

6. **Goods rotation, discontinuance and returns**

6.1 The Customer shall be entitled to return to the Supplier for full refund, at the Supplier's cost and risk, any non-fault Goods that are returned to the Customer at any time during or after Termination of this Agreement.

6.2 The Customer shall be entitled to return to the Supplier for credit any Goods which have been held by the Customer for at least 6 months from Delivery.

6.3 The Customer may return Goods in accordance with clause 6.2 up to 4 times per Year.

6.4 In the event that any Goods are discontinued, the Supplier shall inform the Customer in writing at least 90 days prior to such Goods being discontinued. The Customer may at its sole discretion return to the Supplier any unsold discontinued Goods for full credit at the end of the 90 days' notice period.

7. **Title and risk in the Goods**

7.1 Save where otherwise agreed in writing:

7.1.1 the risk in Goods delivered to the Customer shall pass to the Customer on Delivery; and

7.1.2 the title to each of the Goods shall pass to the Customer on the Customer's payment for such Goods. Nothing in this clause 7.1.2 shall prevent the Customer from using or selling the Goods prior to title passing.

7.2 The Supplier warrants that, on the date of Delivery, the Supplier shall have the full and unrestricted right to sell the Goods to the Customer. Subject to clause 7.1.2, title to any Goods which the Customer rejects shall revert to the Supplier only when the Customer has recovered in full the Price paid for the relevant rejected Goods together with any costs it has incurred in storing and/or returning such Goods to the Supplier.

8. **Provision of the Services**

The Supplier warrants that it shall, in providing the Services:

8.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;

8.2 perform the Services with reasonable care, skill and diligence in accordance with Good Industry Practice;

8.3 ensure that the Supplier Personnel are suitably skilled, experienced and qualified to perform tasks assigned to them, and of sufficient number to ensure that the Supplier performs its obligations in accordance with this Contract;

8.4 devote all the time and attention to the provision of the Services which is necessary to provide them in accordance with this Contract;

8.5 keep the Customer informed of the status of the Services on a regular basis and, in any event, as and when reasonably requested by the Customer;

8.6 ensure that the Services correspond with their description and are of satisfactory quality (within the meaning of the Supply of Goods and Services Act 1982); are fit for any purpose held out by the Supplier or expressly or impliedly made known to the Supplier by the Customer, and in this respect the Customer relies on the Supplier's skill and judgment; and are free from defects in design, material and workmanship and shall remain so for 12 months after delivery;

8.7 provide all equipment, tools and such other items as are required to provide the Services; and

8.8 not do or omit to do anything which may:

8.8.1 bring the name or reputation of the Customer or any of the Customer Group into disrepute or prejudice the interests of the business of the whole or any part of the Customer Group; or

8.8.2 cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business and the Supplier acknowledges that the Customer may rely or act on the Services.

9. **Customer obligations**

9.1 The Customer shall provide the Supplier with:

9.1.1 all necessary co-operation; and

9.1.2 all necessary access to such information, as may reasonably be required by the Supplier in order to perform its obligations under this Contract.

9.2 The Customer shall comply with all Applicable Law with respect to its activities under this Contract.

10. **Remedies**

10.1 If any Goods are not delivered on the Delivery Date or do not comply with the undertakings set out in clause 4.1 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following remedies:

10.1.1 reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

10.1.2 require the Supplier to repair or replace the rejected Goods or to provide a full refund of the price of the rejected Goods (if paid); and/or

10.1.3 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make on a particular Order, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused solely by the Customer's failure to comply with its obligations under this Contract.

10.2 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 10.1.2, the Customer may, without affecting its rights under this clause 10, obtain substitute Goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.

10.3 If the Supplier fails to perform any of the Services in accordance with this Contract by the applicable date(s), the Customer may, without limiting any of its other rights or remedies, exercise any one or more of the following remedies:

10.3.1 where such deficiency or non-compliance arises within 12 months from the date of performance of the Services, require the Supplier at its own cost to:

(a) re-perform the Services and/or

(b) remedy any deficiency in the Services or non-compliance with this Contract as soon as possible and in any event within 10 Business Days;

10.3.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

10.3.3 recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;

10.3.4 where the Customer has paid in advance for Services that have not been provided by the Supplier in accordance with this Contract, to require the Supplier to refund the Charges relating to such Services on demand; or

10.3.5 claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to perform the Services in accordance with this Contract by the relevant date(s).

10.4 The terms of this Contract shall apply to any repaired or replacement Goods and/or substituted or remedial Services supplied by the Supplier.

10.5 The Customer's rights and remedies under this clause 10 are in addition to its rights and remedies implied by statute and common law.

11. Prices

11.1 In consideration of the supply of the Goods and provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Customer shall pay the Price in accordance with clause 12.

11.2 The Prices shall be the prices set out in the latest published version of the Supplier's price list and:

11.2.1 exclude amounts in respect of VAT, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;

11.2.2 in respect of the Goods include all taxes and duties (other than VAT), the costs of packaging, insurance and carriage of the Goods; and

11.2.3 in respect of the Services include all taxes and duties (other than VAT) incurred (directly or indirectly) by the Supplier in connection with the performance of the Services.

11.3 The Supplier shall provide the Customer with at least 60 days' notice of any Price increase. The Prices in force on the date that the Order is placed shall be the applicable Price.

11.4 In the event that the Supplier reduces the Price of the Goods the Supplier shall credit the Customer with the difference between the price paid or payable by the Customer and the reduced price of each unit of Goods purchased by the Customer and held in stock at the time the Supplier notification of price reduction was received.

11.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and allow the Customer to inspect and take copies of such records at reasonable times on request.

11.6 Unless otherwise expressly set out in this Contract, the obligation to pay the Price shall constitute the Customer's entire payment obligation for the performance of the Supplier's obligations.

12. Payment

12.1 The Supplier shall submit an invoice for each delivery on or within 30 Business Days after Delivery. The Supplier shall ensure that each invoice specifies the relevant Order Number, the unique delivery reference number (as set out on the delivery note), the Price, the Supplier's VAT registration number, along with all the information required for inclusion in a delivery note under clause 5.6 and any additional information provided for in this Contract. Any invoice which does not comply with these requirements shall be deemed to have been incorrectly submitted and shall be returned to the Supplier for correction.

12.2 Unless agreed otherwise in the Commercial Terms, the Customer shall pay each correctly submitted invoice in respect of Goods and/or Services that comply with this Contract within 60 days of the Customer's receipt of a valid invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

12.3 If the Customer disputes the whole or any part of an invoice, it may withhold payment in respect of the disputed amount provided that it gives notice in writing to the Supplier of any intention to withhold payment, specifying the amount to be withheld and the grounds for withholding payment. Where only part of an invoice is disputed, the Customer shall pay the undisputed amount on the due date as set out in clause 12.2. The Supplier's obligations to supply the Goods and Services shall not be affected by any payment dispute.

12.4 Except where the Customer withholds an amount due to a bona fide dispute pursuant to clause 12.3, the Supplier shall be entitled to charge simple interest on undisputed overdue sums at the rate of 2% per annum above the base lending rate for the time being of Customer's Bank from the day after the due date for payment until receipt of payment in full. The parties agree that the Supplier's right to claim interest under this clause 12.4 shall be a substantial remedy for late payment of undisputed invoices. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.

12.5 The Customer shall be entitled to deduct from any sum due to the Supplier any sums that the Supplier may owe to it at any time.

13. **Intellectual Property Rights**

13.1 The Supplier represents, warrants and undertakes that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant and perform all its obligations under and in accordance with this Contract.

13.2 All Intellectual Property Rights arising solely and directly as a result of performance of the Services (including in any Goods developed specifically for the Customer) shall vest in the Customer unless otherwise agreed in writing between the parties and all such rights (both existing and future) are assigned by the Supplier to the Customer with full title guarantee.

13.3 The Supplier shall promptly at the Customer's expense do (or procure) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of this Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer pursuant to this clause 13.

13.4 The Supplier grants the Customer the non-exclusive right to use its trade marks in the promotion, advertisement and sale of the Goods and/or Services and the Customer shall comply with any reasonable request of the Supplier in respect of such use.

13.5 All the Customer's Confidential Information (including all Intellectual Property Rights in the same) supplied or provided by the Customer and/or any of its Group Companies shall be and shall remain the exclusive property of the Customer or the relevant Group Company or relevant third party and the Supplier shall acquire no right, title or interest in or to the same. The Supplier shall use such items solely for the purpose of providing the Services.

14. **Warranties and indemnities**

14.1 The Supplier warrants and represents that (and it shall be a condition of this Contract that):

14.1.1 the Supplier has full, clear and unencumbered title to the Goods and any other goods supplied to the Customer under this Contract as part of the Services; and

14.1.2 the Supplier's provision of and the Customer's use or resale of the Goods and/or receipt of the Services in accordance with this Contract will comply with Applicable Law and will not infringe the Intellectual Property Rights or other rights of any third party.

14.2 Without prejudice to any other right or remedy the Customer may have, the Supplier shall indemnify, keep indemnified and hold harmless the Customer and each of its officers and employees in full and on demand from and against all claims, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation, whether arising in tort (including negligence), in contract or otherwise whether or not such losses were foreseeable or foreseen at the date of this Contract 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 Customer arising out of or in connection with:

14.2.1 any breach of the warranties contained in clause 14.1;

14.2.2 any claim by a third party arising from the Supplier's breach or negligent performance or non-performance of its obligations under this Contract;

14.2.3 any claim made against the Supplier by a third party arising out of or in connection with the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier, its employees, agents or subcontractors;

14.2.4 any action or investigation affecting the Customer by the Information Commissioner to the extent that such action or investigation is a result of the Supplier's negligence, breach of this Contract or breach of Applicable Law;

14.2.5 the Supplier's or any of its subcontractors' or suppliers' fraud; and

14.2.6 any recall of any Goods from the retail or wholesale markets.

14.3 The indemnities set out in clause 14.2 shall apply whether or not the Customer has been negligent or at fault.

14.4 If a payment due from the Supplier under clause 14.2 is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

14.5 The Customer may at its option satisfy any indemnity given in this Contract (in whole or in part) by way of deduction from any payments due to the Supplier.

15. **Liability**

15.1 Neither party limits its liability for:

15.1.1 death or personal injury caused by its negligence or that of its employees, agents or sub-contractors;

15.1.2 fraud or fraudulent misrepresentation by it or its employees;

15.1.3 breach of any warranty as to title implied by Applicable Law; or

15.1.4 any other act or omission, liability for which may not be limited under Applicable Law.

15.2 Subject to clause 15.1, the Customer's total aggregate liability in connection with this Contract shall in no event exceed the total of the Price paid or payable to the Supplier in respect of the Services and /or Goods which are the subject of the cause of action or claim during the 12 month period immediately preceding the event giving rise to the cause of action or claim.

16. **Insurance**

16.1 The Supplier shall take out and maintain in force at its own cost during the Term and for three years after this Contract's termination or expiry at least the following insurance policies with reputable insurers to cover its relevant potential liabilities in connection with this Contract:

16.1.1 product liability insurance;

16.1.2 product guarantee insurance;

16.1.3 product recall insurance;

16.1.4 public liability insurance;

16.1.5 professional indemnity insurance; and

16.1.6 employers' liability insurance.

16.2 The Supplier shall ensure that each insurance policy is in a sum that will satisfy its obligations and accepted liabilities under this Contract in respect of any one act or occurrence or series of acts or occurrences arising in any one Year.

16.3 The Supplier shall, on reasonable request, provide to the Customer copies of the certificates of insurance in relation to all the required insurances.

16.4 For the avoidance of doubt, none of the requirements contained in this clause 16 as to the insurance cover to be maintained by the Supplier shall in any manner limit the Supplier's liabilities and obligations under this Contract.

17. **Right to audit**

17.1 The Supplier shall allow the Customer, and any auditors of or other advisers to the Customer on no less than five Business Days' notice (save where immediate access is required by the Customer's regulator) to access any of the Supplier's premises, systems, personnel and relevant records as may be reasonably required in order to:

17.1.1 fulfil any legally enforceable request by any regulator;

17.1.2 undertake verifications of the accuracy of any of the Supplier's invoices or identify suspected fraud; and/or

17.1.3 undertake verification that the Goods and Services are being provided and all obligations of the Supplier are being performed in accordance with this Contract.

17.2 If an audit identifies that the Customer has overpaid any charges under this Contract, the Supplier shall pay to the Customer the amount overpaid within ten Business Days from the date of receipt of an invoice or notice to do so.

18. **Assignment and subcontracting**

18.1 Save as provided in clause 18.2, the Supplier shall not assign or transfer this Contract or the benefits or obligations hereof without the written consent of the Customer (which shall not be unreasonably withheld or delayed).

18.2 The Supplier shall not enter into any sub-contract with any person for the performance of any part of this Contract without the prior written consent of the Customer (which shall not be unreasonably withheld or delayed). Any consent given by the Customer under the provisions of this clause shall not relieve the Supplier from its obligations under this Contract and the Supplier shall be liable for the acts and omissions of its sub-contractors.

19. **Confidentiality**

19.1 Subject to clause 19.2, each party (the **"Recipient"**) shall keep the other party's (the **"Discloser's"**) confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any of its Group Companies (**"Confidential Information"**) confidential and:

19.1.1 use such Confidential Information solely for the performance of its obligations under this Contract; and

19.1.2 keep such Confidential Information strictly confidential and not, without the Discloser's prior written consent, disclose it to any other person.

19.2 The provisions of clause 19.1 shall not apply to any Confidential Information that:

19.2.1 is already in the public domain or comes into the public domain in the same or substantially the same form in which it has been disclosed in connection with this Contract without breach of this Contract; or

19.2.2 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required), provided that a particular disclosed or discovered use, combination, analysis, form or collection of information will not be in the public domain simply because it could be re-created using information in the public domain.

19.3 The Recipient shall give the Discloser as much notice of any disclosure required under clause 19.2.2 as is reasonable and lawful in the circumstances (if any) and shall provide reasonable assistance to the Discloser in avoiding or limiting the required disclosure.

19.4 The Supplier acknowledges that the Customer's Confidential Information includes the results of the Services.

20. **Publicity**

20.1 The Supplier shall not make, or permit any person to make, any public announcement concerning this Contract without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed) except to the extent required by Applicable Law. The Supplier shall not refer to this Contract, the Customer or any of the Customer's products or brands in any customer list, presentation, article or other promotional material without the Customer's prior written consent.

20.2 The Supplier shall not use the Customer's name as a reference or in any advertising or promotional materials, press release, tender, proposal, speech, article or other similar material without the Customer's prior written consent.

21. **Data protection**

21.1 If, in the performance of its obligations under this Contract, the Supplier is required to process personal data as the Customer's data processor the Supplier shall:

21.1.1 do so only for the purpose of supplying the Goods and/or performing the Services;

21.1.2 comply with all relevant instructions or requests that the Customer may give to the Supplier from time to time concerning such processing including:

(a) the provision of explanatory information on the Customer's business, processes, systems and/or controls; and

(b) the delivery up of any relevant personal data in such form as the Customer may reasonably request;

21.1.3 maintain reasonably appropriate processes, systems and controls to guard against any act or omission that would put the Customer (as data controller) in breach of Applicable Laws relating to data protection or privacy and take appropriate technical and organisational security measures to safeguard such data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, that data, having regard to:

(a) the nature of such data and the harm which could result from such processing, loss, destruction or damage; and

(b) the state of technological development and the cost of implementing such measures;

21.1.4 not cause or allow such data to be transferred out of or otherwise processed outside the European Economic Area;

21.1.5 not pass such data to any third party, except:

(a) with the Customer's prior written consent in each case; and

(b) where the Supplier has entered into a written contract with that third party under which that third party agrees to obligations that are materially equivalent to those set out in this clause 21;

21.1.6 procure that all third parties to whom personal data is passed pursuant to clause 21.1.5 comply with the terms of this clause 21;

21.1.7 where the Customer requires assistance from the Supplier in order to respond to requests, queries and/or investigations in respect of the personal data or requires that the Supplier help the Customer in reconstructing and/or otherwise safeguarding the personal data, the Supplier shall provide the Customer with such assistance as the Customer reasonably requests within any timescales specified by the Customer. If no timescales are specified, the Supplier must respond to and comply with the Customer's request within a reasonable period of time after receiving the request for assistance;

21.1.8 allow the Customer access (on reasonable notice) to its premises and/or any other location where personal data is processed under this Contract to allow the Customer to audit the Supplier's compliance with this clause 21; and

21.1.9 at any time upon request, and in any event upon termination or expiry of this Contract, (unless the Customer agrees otherwise in writing in each case) deliver up all relevant personal data that the Supplier holds in connection with this Contract in such form as the Customer may reasonably request. Following such delivery up, and at such time and in such manner as the Customer shall reasonably direct, the Supplier shall promptly and securely delete or destroy all such personal data and certify that it has done so in a form reasonably satisfactory to the Customer.

21.2 For the purpose of this clause 21:

21.2.1 the terms **"personal data"**, **"data controller"**, **"data processor"** and **"process"** have the meanings given to them in the General Data Protection Regulation((EU) 2016/679); and

21.2.2 the Supplier's obligations in respect of personal data exclude any personal data relating to its personnel engaged in the performance of the Supplier's obligations under this Contract generated by the Supplier for the purposes of administering this Contract.

22. **Ethics**

22.1 Without prejudice to any obligations in the Supplier Manual, the Supplier shall:

22.1.1 comply with all Applicable Laws relating to anti-bribery and anti-slavery including the Bribery Act 2010 and the Modern Slavery Act 2015 (**"Relevant Requirements"**);

22.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in the United Kingdom;

22.1.3 comply with the Customer's policies relating to anti-bribery and anti-slavery and enforce them where appropriate (**"Relevant Policies"**);

22.1.4 ensure that the Goods and Services are provided:

(a) without any breach of the Modern Slavery Act 2015 or activity that would constitute a breach of that act if it took place within England and Wales;

(b) in accordance with good ethical trading practices and standards; and

(c) in a manner reflecting a commitment to safety and human rights in the workplace;

22.1.5 have and maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 22.1.2, and will enforce them where appropriate; and

22.1.6 within one week of the Commencement Date, and each anniversary of the Commencement Date, certify to the Customer in writing that the Supplier complies with this clause 22 and provide such supporting evidence of compliance as the Customer may reasonably request.

22.2 The Supplier shall ensure that any person associated with the Supplier who performs services or supplies goods in connection with this Contract does so only on the basis of terms equivalent to those imposed on the Supplier in this clause 22 (**"Relevant Terms"**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms.

22.3 For the purpose of this clause 22:

22.3.1 the meaning of **"adequate procedures"** and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under the Bribery Act 2010); and

22.3.2 a person associated with the Supplier includes the Supplier's employees (whether or not they are Supplier Personnel) and any of the Supplier's sub-contractors.

23. **Commencement and duration**

23.1 This Contract shall commence on the Commencement Date. Unless terminated earlier in accordance with clause 24, this Contract shall continue in full force and effect for the Initial Term as set out in Part A. Where indicated in Part A, at the end of the Initial Term and at the end of the Extended Term, the agreement shall automatically extend for the Extended Term.

23.2 Either party may terminate this Contract by giving written notice to the other (the length of such notice is as set out in Part A), not to expire before the end of the Initial Term or the end of the relevant Extended Term, as the case may be.

24. **Termination**

24.1 The Customer may terminate this Contract immediately on written notice if:

24.1.1 the Supplier (or, if the Supplier is a body corporate, any of its directors or other officers) is guilty of fraud, dishonesty, gross negligence or gross misconduct or acts in any manner which in the Customer's reasonable opinion brings or is likely to bring the Supplier or the Customer or any of Group Company of the Customer into disrepute or is materially adverse to the interests of the Customer or its Group;

24.1.2 the Supplier is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

24.1.3 the Supplier breaches clause 5, 19, 21, or 22;

24.1.4 the Supplier is, in the Customer's reasonable opinion, negligent or incompetent in the performance of the Services; or

24.1.5 the Supplier commits any breach of Applicable Law.

24.2 Each party shall be entitled to terminate this Contract immediately on written notice to the other if the other party:

24.2.1 commits any continuing or material breach of any of the provisions of this Contract and, if the breach is capable of remedy, fails to remedy the same within 30 days of receipt of written notice giving full particulars of the breach and the action required to remedy such breach;

24.2.2 repeatedly breaches any of the terms of this Contract in a manner inconsistent with an intention or ability to give effect to the terms of this Contract;

24.2.3 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts when due or otherwise becomes or suffers or is the subject of a distraint, writ of control or warrant of control, event of insolvency or any similar process or event, whether in the United Kingdom or otherwise; or

24.2.4 ceases or threatens to cease to carry on all or substantially the whole of its business.

24.3 If either party undergoes a Change of Control:

24.3.1 that party shall notify the other party of such change within five Business Days of the Change of Control taking place; and

24.3.2 if the other party, acting reasonably, is of the opinion that the Change of Control results in a material conflict of interest, it shall have the right to terminate this Contract immediately upon written notice.

25. Consequences of termination

25.1 Save as provided in this clause 25, each party's rights, liabilities and obligations under this Contract shall cease upon its termination or expiry.

25.2 Termination or expiry of this Contract 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 this Contract which existed at or before the date of termination or expiry.

25.3 Upon expiry or termination of this Contract for any reason:

25.3.1 the Customer shall be entitled to notify the Supplier of any unsold Goods and the Supplier shall, within 10 Business Days of notification, credit the Customer a sum equivalent to the Price the Customer paid for the unsold Goods and confirm whether it requires the Customer to return the unsold Goods to the Supplier at the Supplier's expense;

25.3.2 each party shall promptly return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or any of its Group Companies in connection with the supply of the Goods or performance of the Services under this Contract;

25.3.3 each party shall promptly return to the other party all documents and materials (and any copies) containing the other party's Confidential Information and erase all the other party's Confidential Information from its computer systems (to the extent reasonably possible);

25.3.4 the Supplier shall render all reasonable assistance, provide all information and documentation and make available to the Customer such of the Supplier Personnel as may reasonably be required by the Customer or a replacement supplier to facilitate the handover of the Services to the Customer or a replacement supplier (for which the parties will agree charges as appropriate); and

25.3.5 clauses that expressly or by implication survive termination shall continue in full force and effect including clauses 6 (*Goods rotation, discontinuance and returns),* 14 (*Warranties and Indemnities*), 15 (*Liability*), 16 (*Insurance*), 19 (*Confidentiality*), 25 (*Consequences of Termination*), 35 (*Governing Law*) and 36 (*Jurisdiction*).

26. Force majeure

26.1 If a party (an **"Affected Party"**) is prevented from performing any of its obligations under this Contract by a Force Majeure Event, provided it has complied with clause 26.3, it shall not be in breach of this Contract 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.

26.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. The Customer shall not be obliged to pay any part of the Price in respect of any Goods and Services that the Supplier is prevented from supplying as a result of a Force Majeure Event.

26.3 The Affected Party shall:

26.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than two days from its start, 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 this Contract;

26.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations; and

26.3.3 as soon as reasonably possible after the end of the Force Majeure Event, notify the other party of this in writing and resume performance of its obligations under this Contract.

26.4 If the Supplier is excused from the performance of its obligations under this Contract in accordance with this clause 26 and, as a result, delivery of any Goods and/or provision of any of the Services is substantially prevented, hindered, degraded or delayed for more than three consecutive Business Days, then at the Customer's option and without limiting any other rights the Customer may have under or in connection with this Contract the Customer may:

26.4.1 procure those Goods and/or Services from a third party where practical and the Supplier shall provide all such assistance to the Customer as the Customer may reasonably require; and

26.4.2 remove the affected Goods and/or Services from the scope of the affected Order, in which case the Supplier shall not provide such Goods and/or Services and the Customer shall not be obliged to pay for such Goods and/or Services.

26.5 The failure of any sub-contractor to perform any obligations owed to the Supplier shall only constitute a Force Majeure Event with respect to the Supplier's obligations if and to the extent that the failure by the sub-contractor is itself caused by a Force Majeure Event. In such circumstances, the Supplier shall be obliged forthwith to use an alternative sub-contractor if to do so would enable the Supplier to resume the performance of its obligations.

26.6 If a Force Majeure Event prevents the Supplier from performing any of its obligations under this Contract for a continuous period in excess of 10 Business Days or for a total of more than 20 Business Days in any Year, the Customer may, without liability, immediately terminate this Contract by written notice provided the relevant Force Majeure Event remains subsisting at the time that it gives such notice.

27. **Variation**

The Customer may vary the Supplier Manual from time to time by giving to the Supplier no less than 30 days' prior written notice. No other variation of this Contract shall be effective unless it is in writing, refers to this Contract and is signed by each party (or its authorised representative).

28. **Costs**

Except as expressly provided in this Contract, each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Contract.

29. **Severance**

If any clause of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant clause shall be deemed deleted. Any modification to or deletion of a clause under this clause shall not affect the validity and enforceability of the rest of this Contract.

30. **Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

31. **Notices**

31.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

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

31.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;

31.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and

31.2.3 if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.

31.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

31.4 A notice given under this Contract is not valid if sent by email.

32. **Entire agreement**

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

33. **Third party rights**

33.1 Members of the Customer Group shall have the benefit of all rights, benefits and limitations provided for in this Contract and for this purpose references to the Customer shall include each of the Customer's Group Companies as applicable. Each such Customer Group Company shall be entitled to enforce this Contract, in addition to the Customer, subject to and in accordance with its terms.

33.2 Notwithstanding clause 33.1, the rights of the Customer and the Supplier to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

33.3 Save as provided in clause 33.1, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract.

34. **Counterparts**

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

35. **Governing law**

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

36. **Jurisdiction**

The Supplier irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the Customer's right to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.