

The following Conditions shall apply to this purchase:

## 1. INTERPRETATION

### 1.1 Definitions

“**Conditions**” shall mean the terms and conditions of purchase set out in this document;

“**Contract**” shall mean the contract formed as a result of the Supplier’s unconditional acceptance of the Order for the sale and purchase of the Goods and/or Services and includes any special terms and conditions agreed in writing between the Purchaser and the Supplier, any terms set out in the Order and these Conditions;

“**Data Protection Legislation**” shall mean the GDPR and all other national implementing laws, regulations, secondary legislation applicable in the UK, as amended or updated from time to time;

“**Deliverables**” shall mean all goods, records, reports, documents, papers or other materials or deliverables developed or produced by or on behalf of the Supplier as part of or in connection with the Goods and/or Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

“**Delivery Date**” shall mean the date for delivery of the Goods and/or performance of the Services specified in the Order;

“**Goods**” shall mean all materials, products and services to be purchased or supplied in accordance with the description, quantity and specifications set out in the Order.

“**GDPR**” shall mean EU General Data Protection Regulation 2016/679;

“**Intellectual Property Rights**” shall mean any rights (including moral rights) subsisting in any patents, copyright, trade marks, business names and domain names, rights in get-up, 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;

“**Order**” shall mean the Purchaser’s purchase order form, which includes a description of the Goods and/or Services, the charges and any terms and conditions that apply to the purchase of the Goods and/or Services which are additional to these Conditions;

“**Purchaser**” shall mean SHIN-ETSU HANDOTAI EUROPE LIMITED incorporated in Scotland under the companies act (with company number SC087947), and any assignee of the Purchaser;

“**Services**” shall mean the services, including the Deliverables, to be provided by the Supplier under the Contract as set out in the Order; and

“**Supplier**” shall mean the person, firm or company by whom the Order is accepted.

### 1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to writing or written includes faxes and emails.

## 2. BASIS OF CONTRACT

- 2.1 Any Order placed by the Purchaser for the purchase of Goods and/or Services is subject to these Conditions. No other terms and/or conditions (including any terms or conditions written on or attached to any quotation, acknowledgement of acceptance of Order, specification, sales invoice, delivery note form, document or correspondence) sought to be imposed by the Supplier will form part of the Contract. No conduct of the Purchaser shall constitute acceptance of such other terms and/or conditions and the Supplier waives any right which it otherwise might have had to rely on such terms and conditions.
- 2.2 Each Order by the Purchaser shall constitute an offer by the Purchaser to purchase the Goods and/or Services subject to these Conditions in accordance with condition 2.4.
- 2.3 Any variation to the Order or these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Purchaser and any variation in price, quantity, delivery or other terms and conditions agreed orally shall be confirmed in writing by the Purchaser and the Supplier within 7 days from the date of such agreement, otherwise such variation shall not be binding on either party.
- 2.4 The Order shall be deemed to be accepted by the Supplier on the earlier of:
- (a) the Supplier issuing a written acceptance of the Order; and
  - (b) the Supplier doing any act consistent with fulfilling the Order,
- at which point the Contract shall come into existence (the "**Commencement Date**"). If the Supplier has not notified the Purchaser of its acceptance or rejection of the Order within 14 days of the date thereof or has not supplied or commenced the supply of Goods and/or Services, it shall be deemed to have accepted the Order.
- 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

## 3. THE GOODS

- 3.1 The Supplier warrants and undertakes that all Goods supplied to the Purchaser: (a) shall be properly finished, free from defects and inadequacies, safe and durable; (b) be 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 Purchaser expressly

or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement; (c) shall conform with the specifications and any agreed quality assurance standards set out in the Order; and (d) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery to the Purchaser, all to the satisfaction of the Purchaser.

3.2 If the Purchaser considers that the Goods or any of them do not conform or are unlikely to comply with the Supplier's warranties and undertakings at condition 3.1 hereof, the Purchaser shall have the right to reject such Goods within a reasonable time of their delivery and inspection by the Purchaser, and shall have the right to purchase substitute Goods elsewhere and to claim from the Supplier for any additional expense incurred, without prejudice to any other right which the Purchaser may have against the Supplier arising out of such non-compliance. The Purchaser shall also have the right to recover any price paid for such Goods and to return any other Goods supplied under the Order for full credit.

#### **4. ASSIGNATION AND SUBCONTRACTING**

4.1 The Supplier shall not assign, delegate, subcontract, transfer, novate, charge or otherwise dispose of all or any of its rights and obligations under the Contract or any part thereof, nor appoint any sub-contractor without the prior written consent of the Purchaser and subject to conditions 4.2, 4.3 and 4.4.

4.2 In order to help the Purchaser reach a decision on whether to consent to the Supplier assigning or subcontracting the Contract, the Supplier shall provide the Purchaser with a copy of any proposed contract of assignment or subcontract for approval, together with any other information that the Purchaser may reasonably require about the proposed assignee or subcontractor.

4.3 Where the Supplier assigns or sub-contracts any of its duties or obligations under this Contract pursuant to conditions 4.1 and 4.2, it shall at all times remain liable to the Purchaser for the performance of all of its duties and obligations under the Contract.

4.4 If the Purchaser agrees that the Supplier may assign or subcontract the Contract, the Supplier shall implement an appropriate system of due diligence, audit, and training designed to ensure compliance with the Anti-slavery Policy and the Anti-Bribery Policy.

4.5 The Purchaser may at any time assign or subcontract the Contract or any part thereof (including any Order) to any person, firm or company.

#### **5. DELIVERY OF GOODS, PRICE, TITLE AND RISK**

5.1 The Supplier shall deliver the Goods in the quantities specified in the Order to the address therein specified (the '**Delivery Location**'). The Supplier shall send to the Purchaser advice notes of despatch of each consignment of the Goods giving details of the delivery. All Goods shall be delivered adequately packed or protected in clearly marked packages showing the names and addresses of Supplier and Purchaser and shall be accompanied by a Delivery Note identifying the Goods and by all necessary instructions, manuals and the like. The

purchase order number shall be specified on all advice notes and delivery notes. Acceptance of the Goods by the Purchaser shall not prejudice any rights which the Purchaser may have under this Contract including without prejudice in conditions 3 and 15.

5.2 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

5.3 There shall be no variation in the price of the Goods without the Purchaser's written acceptance.

5.4 The Goods shall become the property of the Purchaser (and title in the Goods shall pass) at whichever is the earlier of the following (i) when the Goods are delivered or constructively delivered to the Purchaser; or (ii) when the Goods have been included in a progress payment prior to delivery or constructive delivery. No lien or other right there-in shall remain with or be reserved to the Supplier. Notwithstanding that (ii) shall apply, the risk in the Goods shall remain with the Supplier until they are delivered or constructively delivered to the Purchaser.

5.5 The Delivery Date(s) and the relevant quantities of the Goods to be delivered to the Purchaser at the Delivery Location on such dates (all as set out in the Order) shall be strictly adhered to. Time shall be of the essence. Any Goods not delivered on the delivery date may be rejected by the Purchaser who may exercise all of the rights specified in conditions 3 and 15 hereof. The provisions of condition 24 shall also apply. The Supplier shall give notice to the Purchaser as soon as possible if delivery of the Goods is likely to be delayed.

## **6. SERVICES**

6.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Purchaser in accordance with the terms of the Contract.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Purchaser notifies to the Supplier, provided that if no performance dates are specified, the Supplier shall perform the Services promptly and diligently and in any event within a reasonable time, and time is of the essence in relation to any of those performance dates.

6.3 In providing the Services, the Supplier warrants and undertakes that it shall: (a) co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser; (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract; (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose that the Purchaser expressly or impliedly makes known to the Supplier; (e) use high quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Purchaser, will be free from defects in workmanship, installation and design; (f) obtain and at all times maintain all licences and

consents which may be required for the provision of the Services; (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises; and (k) not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Purchaser may rely or act on the Services.

## 7. CHARGES AND PAYMENT

7.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Purchaser.

7.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Purchaser, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.3 Unless otherwise agreed in the Order, in respect of the Goods, the Supplier shall invoice the Purchaser on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Purchaser on completion of the Services. Each invoice shall include such supporting information required by the Purchaser to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

7.4 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Purchaser to inspect such records at all reasonable times on request.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 All materials (including equipment and tools) supplied by the Purchaser to the Supplier and/or paid for by the Purchaser (the "**Purchaser Materials**") shall be the exclusive property of the Purchaser and shall be: (i) clearly identified as the property of the Purchaser; (ii) subject to removal upon demand by the Purchaser at any time without any additional cost to the Purchaser; kept separate from other materials; (iii) held by the Supplier in safe custody at its own risk; and (iv) maintained and kept in good condition by the Supplier.

8.2 In the absence of any prior written agreement to the contrary, all Intellectual Property Rights created by the Supplier or any employee, agent or subcontractor of the Supplier (i) in the course of providing Goods and/or performing the Services; or (ii) exclusively for the purpose of providing Goods and/or performing the Services, shall vest in the Purchaser immediately on creation and the Supplier hereby assigns ownership of all such present and future Intellectual Property Rights to the Purchaser with full title guarantee and free from

encumbrances and third party rights. If requested to do so by the Purchaser, the Supplier shall, without charge to the Purchaser, execute all documents and do all such acts as the Purchaser may require to perfect the assignment under this Condition 8.2.

8.3 Subject to Condition 8.2, all Intellectual Property Rights in information supplied by the Supplier for the purposes of performing the Services (other than Intellectual Property Rights in any Purchaser Materials) shall continue to be owned by the Supplier and the Supplier grants to the Purchaser, or shall procure the direct grant to the Purchaser of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify the Deliverables (excluding Purchaser Materials) for the purpose of receiving and using the Services and the Deliverables.

8.4 The Supplier warrants to the Purchaser that the supply of the Services and/or the use of the Goods by the Purchaser, or any person to whom the Purchaser may sell or dispose of the Goods to, will not infringe any Intellectual Property Rights of a third party. The Supplier acknowledges that all such rights shall be the property of the Purchaser and shall co-operate in procuring the establishment and protection of the same and that all relevant assignments be completed to give effect to the foregoing.

## **9. INSPECTION**

9.1 The Supplier shall permit at the works and at the works of any sub-contractors such progress and inspection surveillance as is considered necessary by the Purchaser provided that any such surveillance shall in no way relieve the Supplier of its obligations under the Contract.

## **10. CONFIDENTIALITY**

10.1 Any Order placed by the Purchaser shall be treated as confidential and the Supplier shall not make use of the Purchaser's name or the name of any of its associated companies for publicity purposes without the Purchaser's prior consent. All designs, drawings, specifications and information which may be supplied by the Purchaser are confidential and shall only be used for the purpose of this Order. The Supplier shall use its best endeavours to maintain such confidentiality and shall not make any disclosure to any third party without the consent of the Purchaser. The Supplier's obligations of confidentiality shall continue to subsist notwithstanding delivery of the Goods and/or performance of the Services or delivery of any confidential material. The right of property therein shall remain at all times with the Purchaser. Following delivery of all of the Goods and/or performance of the Services, all information in writing or other material form shall be delivered to the Purchaser.

## **11. SUSPENSION**

11.1 In the event that the Purchaser wishes to suspend the Contract for reasons such as, but not limited to, weather conditions, acts of God, actions of any Government or industrial action, the Contract may be suspended at the Purchaser's option until the circumstances giving rise to the suspension have ceased, subject to the Supplier's right to recover payment for all work executed up to the date of suspension, in accordance with the terms of the Contract, together

with such other charges occasioned directly by the suspension as the Purchaser shall consider reasonable.

## **12. TERMINATION**

12.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier:

- (a) If the Supplier commits a material breach of any term of the Contract (which shall include a failure to deliver the Goods and/or Services to the Purchaser by the Delivery Date set out in the Order). Where such breach is committed, the Purchaser, without prejudice to any other rights it may have, shall be entitled return any Goods supplied to it under the Order for full credit by the Supplier;
- (b) In the event that the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction. Where such an event occurs, the Purchaser, without prejudice to any other rights it may have, shall be entitled return any Goods supplied to it under the Order for full credit by the Supplier;
- (c) If the Supplier is prevented from supplying the Goods and/or Services by reason of Force Majeure (in accordance with condition 17.1) for a period in excess of two weeks; and
- (d) If the Supplier commits any breach of its obligations under condition 16.1 or condition 20.

12.2 The Purchaser may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Purchaser shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

12.3 On termination of the Contract, the Supplier shall immediately deliver to the Purchaser all Deliverables whether or not then complete, and return all Purchaser Materials. If the Supplier fails to do so, then the Purchaser may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **13. INDEMNITY**

13.1 The Supplier shall indemnify the Purchaser and keep the Purchaser indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to 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 Purchaser as a result of or in connection with:

- (a) any breach by the Supplier of the Contract;
- (b) any breach of condition 17.1 (Anti-Slavery Laws) and/or condition 18.1 (Anti-Bribery Laws) and/or condition 21 (Anti-Facilitation of Tax Evasion) and/or condition 22 (Data Protection);
- (c) any claim made against the Purchaser for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (d) any claim made against the Purchaser by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (e) any claim made against the Purchaser 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 the Contract by the Supplier, its employees, agents or subcontractor, except to the extent to which such claim may be attributable to the negligent act or omission of the Purchaser or any of its employees. The provisions of this condition 13 shall survive termination or expiry of the Contract, howsoever arising.

#### **14. INSURANCE**

14.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

#### **15. REMEDIES**

15.1 Without prejudice to any other rights under the Contract which the Purchaser may have, if the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the Delivery Date, or does not comply with the warranties and undertakings set out in conditions 3.1 and 6.3, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Purchaser may exercise any one or more of the following remedies:



- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) within a period of six months from the Delivery Date 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);
- (d) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (e) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
- (f) to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods and/or services from a third party; and
- (g) to claim damages for any other costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

15.2 These Conditions shall apply to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

15.3 The Purchaser's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **16. REPLACEMENT GOODS**

16.1 The Order for Goods is placed by the Purchaser on condition that component parts of identical replacement Goods will be available to the Purchaser to purchase in the United Kingdom on reasonable commercial terms for a period of at least five years from the date of the Order.

## **17. FORCE MAJEURE**

17.1 No failure or omission by either the Supplier or the Purchaser to carry out or observe any of the stipulations conditions or obligations to be performed hereunder shall, except as herein expressly agreed to the contrary, give rise to any claim against the other party or be deemed to be a breach of the Contract if such failure or omission arises from causes beyond the reasonable control of the party claiming majeure ('**Force Majeure**').

## **18. HEALTH AND SAFETY**

18.1 The Supplier shall be responsible for the safety of all persons engaged in the supply of Goods and/or Services to the Purchaser and for all persons who may be effected by the activities of the Supplier and shall procure that all works undertaken by the Supplier and that the Goods supplied by it comply with all of the Purchaser's safety regulations and procedures (which are notified to the Supplier) and with all applicable health and safety legislation in force from time to time, including the Health and Safety at Work Act 1974 and in particular Section 6 thereof.

## 19. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

19.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) comply with the Purchaser's anti-slavery policy as amended by notification to the Supplier from time to time ('**Anti-slavery Policy**'), but only to the extent that such Anti-slavery Policy has been provided or notified to the Supplier.
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (d) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that each of its subcontractors and suppliers shall comply with the Anti-slavery Policy (if applicable) and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (e) use best endeavours to prohibit the use of forced labour, child labour and physically abusive disciplinary methods.

19.2 The Supplier represents and warrants that:

- (a) its responses to the Purchaser's slavery and human trafficking due diligence questionnaire are complete and accurate (but only to the extent that such slavery and human trafficking due diligence questionnaire has been provided to and completed by the Supplier); and
- (b) neither the Supplier nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving slavery and human trafficking; and
  - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

19.3 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

19.4 The Supplier shall notify the Purchaser as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-slavery Policy (if applicable); or
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

19.5 The Supplier shall maintain a complete set of records to trace the supply chain of all Goods provided to the Purchaser in connection with the Contract.

## 20. COMPLIANCE WITH ANTI-BRIBERY LAWS AND POLICIES

20.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
- (d) comply with the Purchaser's ethics, anti-bribery, and anti-corruption policies as amended by notification to the Supplier from time to time ('**Anti-Bribery Policy**') but only to the extent that such Anti-Bribery Policy has been provided or notified to the Supplier.

20.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this condition 20 ('**Relevant Terms**'). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.

20.3 Breach of this condition 20 shall be deemed a material breach under condition 12.1

## 21. ANTI-FACILITATION OF TAX EVASION

21.1 The Supplier shall and shall procure that persons associated with it or other persons who are performing services in connection with this Contract shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
  - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
  - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) not do, or omit to do, any act that will cause or lead the Purchaser to be in breach of the Anti-Bribery Policy;
- (c) promptly report to the Purchaser any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
- (d) have and shall maintain in place throughout the term of this Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another

person (including without limitation employees of the Supplier) and to ensure compliance with condition 21;

- (e) if requested, provide the Purchaser with any reasonable assistance to enable the Purchaser to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Anti-Bribery Policy;
- (f) within 3 months of the date of this Contract, and annually thereafter, certify to the Purchaser in writing signed by an officer of the Supplier, compliance with this condition 21 by the Supplier and all persons associated with it. The Supplier shall provide such supporting evidence of compliance as the Purchaser may reasonably request.

21.2 The Supplier shall keep at its normal place of business detailed, accurate and up-to-date records and books of account showing the steps taken by the Supplier to comply with the Anti-Bribery Policy. The Supplier shall ensure that such records and books of accounts are sufficient to enable the Purchaser to verify the Supplier's compliance with its obligations under this condition 21.

21.3 The Supplier shall permit the Purchaser and its third party representatives, on reasonable notice during normal business hours to access and take copies of the Supplier's records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this condition 21. Such audit rights shall continue for one year after termination of this Contract. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this Contract and for a period of one year after termination of the Contract.

21.4 The Supplier warrants and represents that:

- (a) its responses to the Purchaser's anti-facilitation of tax evasion due diligence questionnaire are complete and accurate; and
- (b) neither the Supplier nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving tax evasion or the facilitation of tax evasion;
  - (ii) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence concerning tax evasion or the facilitation of tax evasion;
  - (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including ,without limitation, any exclusion under regulation 57 of the Public Contracts Regulations 2015 (SI 2015/102) or regulation 80 of the Utilities Contracts Regulations 2016 (SI 2016/274);

21.5 The Supplier shall promptly notify the Purchaser if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in condition 21.4 at the relevant time.

21.6 Breach of this condition 21 shall be deemed a material breach under condition 12.

21.7 If the Purchaser terminates this Contract for breach of this condition 21, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

21.8 No Subcontract shall be entered into without the prior written approval of the Purchaser under condition 4. In addition to fully complying with condition 4, any Subcontract shall be recorded in writing and shall:

(a) impose on and secure from the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Supplier in this condition 21 (**Relevant Terms and Conditions**);

(b) include an undertaking from the Subcontractor in favour of the Purchaser (directly enforceable by the Purchaser) not to enter into any further Subcontract with any third party;

(c) include provisions allowing termination of the Subcontract by the Supplier in accordance with condition 21.9 and a provision for automatic termination of the Subcontract in the event of, and at the same time as, the termination of this Contract.

21.9 After any Subcontract has been entered into, the Supplier shall:

(a) within 30 days of it being entered into, provide the Purchaser with a copy of the Subcontract;

(b) be responsible for the observance and performance by the Subcontractor of the Relevant Terms and Conditions, and shall be directly liable to the Purchaser for any breach by the Subcontractor of any of the Relevant Terms and Conditions;

(c) notify the Purchaser in the case of any such breach; and

(d) if the Subcontractor fails to perform or observe any of the Relevant Terms and Conditions, and if requested by the Purchaser, immediately give the Subcontractor notice, specifying the breach complained of, and:

(i) where the breach is not capable of remedy, terminating the Subcontract immediately;

or

(ii) where the breach is capable of remedy, giving notice that the Subcontract is to terminate 30 days from the date of the notice being given unless the Subcontractor has remedied the breach within that period.

21.10 For the purpose of this condition 21:

(a) the question of whether a person is associated with another person shall be determined in accordance with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of that Act) and, for the purposes of this condition 21, a person associated with the Supplier includes but is not limited to any Subcontractor;

(b) Subcontract means:

(i) any subcontract; and

(ii) any agreement or commitment to enter into a subcontract, relating to services to be supplied under this agreement (in their entirety or any part of them), whether formal or informal and whether or not in writing; and

(c) Subcontractor means any party to the relevant Subcontract which has agreed to supply any goods or services to the Supplier.

## 22. DATA PROTECTION

22.1 Each term used in this condition 22 shall have the meaning given to it in the Data Protection Legislation unless otherwise stated. In particular, the terms “**Controller**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**Processing**”, “**Processor**” and “**Supervisory Authority**” have the meanings set out in GDPR (and the expressions “**Process**”, “**Processed**” and “**Processes**” shall be construed accordingly).

22.2 The Supplier will comply with all applicable requirements of the Data Protection Legislation in respect of Personal Data Processed by it in connection with this Contract. Nothing in this Contract shall relieve the Supplier of its own obligations as Processor under the Data Protection Legislation.

22.3 The parties agree that for the purposes of the Data Protection Legislation, the Purchaser is the Controller and the Supplier is the Processor in respect of all Personal Data Processed pursuant to this Contract.

22.4 To the extent applicable, Annex 1 sets out the scope, nature and purpose of Processing by the Supplier, the duration of the Processing and the types of Personal Data and the categories of Data Subject, as required by Article 28(3) of the GDPR.

22.5 The Supplier shall not Process Personal Data other than on the Purchaser’s instructions (save to the extent that such instructions infringe the Data Protection Legislation, and in which case the Supplier shall immediately notify the Purchaser) unless the Processing is required by applicable laws to which the Supplier is subject, in which case the Supplier shall inform the Purchaser of that legal requirement before commencing the relevant Processing of that Personal Data.

22.6 The Supplier shall ensure the reliability of any employee, agent or contractor who may have access to or Process the Personal Data, and in each case ensure that access is strictly limited to those individuals who have been appropriately vetted and who need to know/access the relevant Personal Data, as strictly necessary for the purposes of the Contract, and ensure that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

22.7 The Supplier shall not transfer Personal Data outside of the United Kingdom or the European Economic Area unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled:

- (a) the Purchaser or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies; and
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing adequate level of protection to any Personal Data that is transferred.

22.8 The Supplier shall implement and maintain (and provide details of such measures to the Purchaser on request) appropriate technical and organisational measures to ensure the security of the Personal Data and prevent unauthorised access to, or Processing of, or any accidental loss, destruction or damage to that Personal Data including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

22.9 The Supplier shall assist the Purchaser by implementing and maintaining appropriate technical and organisational measures, to enable the fulfilment of the Purchaser's obligation to respond to requests to exercise Data Subject rights under the Data Protection Legislation and shall provide the Purchaser with all necessary information required by the Purchaser in respect of any Data Subject requests.

22.10 The Supplier shall notify the Purchaser immediately and in any event within 24 hours after becoming aware of a Personal Data Breach relating to the Processing undertaken in relation to the Purchaser, providing all information requested by the Purchaser. In the event that any such notification is not made within 24 hours, the Supplier must accompany the notice of such Personal Data Breach with full details of the reason for the delay in notification.

22.11 The Supplier shall assist the Purchaser in ensuring compliance with its obligations in so far as applicable to the Contract under the Data Protection Legislation concerning Articles 32 to 36 of the GDPR (inclusive), taking into account the nature of the Processing and the information available to the Supplier.

22.12 The Supplier shall, at any time upon the request of the Purchaser, and in any event upon termination of the Contract, delete or return by secure transfer (in such format as notified by the Purchaser) all the Personal Data in the Supplier's possession to the Purchaser (except for such Personal Data which the Supplier is required by law to keep).

22.13 The Supplier shall maintain a record of all of its Processing activities under or in connection with the Contract and of the measures implemented under this condition 22.

22.14 The Supplier shall make available to the Purchaser on request all information it may request from time to time in order that the Purchaser can assess the Supplier's compliance with this condition 22 and shall allow for and fully cooperate with audits, including inspections, conducted by the Purchaser and/or an auditor mandated by the Purchaser in relation to the Processing of the Personal Data.

22.15 The Supplier shall not transfer Personal Data to, or permit the processing of Personal Data by, any third party or other sub-processor without the prior written approval of the

Purchaser. Where the Purchaser has given such approval, the Supplier shall remain fully liable to the Purchaser for all acts or omissions of any sub-processor and shall:

(a) give the Purchaser full details of the Processing to be undertaken by the sub-processor; and

(b) impose equivalent data protection obligations in this condition 22 and as required by Data Protection Legislation on the sub-processor by way of a written contract.

22.16 The Supplier shall procure that all of its staff, affiliates and any sub-processors who have access to Personal Data in connection with the Contract comply with the terms of this condition 22 and the Supplier shall be liable for all acts and omissions of such personnel, affiliates and sub-processors,

22.17 Any breach of this condition 22 by the Supplier shall be deemed a material breach of this Contract and shall entitle the Purchaser to terminate this Contract under condition 12.1.

### 23. GENERAL COMPLIANCE

23.1 In performing its obligations under the Contract, the Supplier shall:

(a) Support and respect the United Nations Universal Declaration of Human Rights, the International Labour Organisations fundamental conventions and the UN Global Compact;

(b) Sources minerals responsibly; and

(c) Not under any circumstances make or receive facilitation payments on behalf of the Purchaser;

23.2 The Purchaser is a member of the Responsible Business Alliance ('RBA'), formerly known as the EICC. Members of the RBA adopt the RBA ('Code'), which is a code of best practices for the following five areas: Labour, Health and Safety, Environmental, Ethics and Management System. The Code can be found at <http://www.responsiblebusiness.org/standards/code-of-conduct/>. The Supplier agrees to comply with the Code.

23.3 The Supplier shall comply with any and all applicable anti-discrimination legislation, including the Equality Act 2010.

### 24. GENERAL

24.1 The terms and conditions set out in the Contract represent the entire terms and conditions of the agreement between the Supplier and the Purchaser and any amendment or variation thereof shall be required to be made in writing.

24.2 The Supplier shall if requested by the Purchaser enter into an agreement with the Purchaser for the subsequent service and maintenance of the Goods in accordance with the terms of an agreement to be negotiated.

24.3 The Purchaser's failure at any time to require strict performance or compliance by the Supplier of any of its obligations or with any provisions under this Contract shall not waive or



diminish the Purchaser's rights subsequently to demand strict performance of that obligation or any other or strict compliance with that provision or any other.

24.4 It is agreed that the Purchaser's rights under the Contract are in addition to and shall not operate to limit or diminish any rights available to the Purchaser or implied at common law and/or under statute including the Sale of Goods Act 1979 and any re-enactment or amendment thereof.

## **25. GOVERNING LAW AND JURISDICTION**

25.1 The 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 Scotland. The Supplier and the Purchaser prorogate the non-exclusive jurisdiction of the Scottish Courts 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).