

**DOSCPSC05 - Purchasing Standard conditions for the Purchase of Minor Works on Site**

## **1. DEFINITIONS**

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- 1.1. “Best Industry Practice” shall mean the exercise of the highest standards of skill and quality to be expected from a highly skilled and experienced operator engaged in the provision of works and services of the type to be provided by the Contractor under the same or similar circumstances;
- 1.2. “Company” shall mean DeepOcean Subsea Cables Limited;
- 1.3. “Company Representative” shall mean the person(s) named as such in the Contract who has the authority to commit the Company in all matters under the Contract and who shall be responsible for issuing to and receiving from the Contractor all information, instructions and decisions;
- 1.4. “Completion” shall mean the Company has certified that the Works have been completed to the Company’s reasonable satisfaction pursuant to **clause 11.4**.
- 1.5. “Confidential Information” shall mean documents, materials and any and all information which is disclosed to the Contractor by the Company;
- 1.6. “Contract” shall mean the contract between the Company and the Contractor comprising the Purchase Order issued by the Company to the Contractor, these conditions complete with any appendices and any other documents (or part thereof) specified therein. In the event of inconsistency between the documents comprising the Contract, they shall have the precedence in the order herein listed above unless otherwise stated in the Purchase Order;
- 1.7. “Contract Price” shall mean the sum to be paid to the Contractor in accordance with the provisions of the Contract;
- 1.8. “Contractor” shall mean the person, firm or company to which the Purchase Order is issued;
- 1.9. “Purchase Order” means the Company’s Purchase Order;
- 1.10. “Site” shall mean the location(s) where the Works are to be performed;
- 1.11. “Specification” shall mean the specification of the Works including any variation in accordance with **clause 5**;

- 1.12. “Statutory Requirements” shall mean each and every obligation imposed by law relevant to the Contract including without prejudice to the generality of the foregoing all statutes, statutory instruments, regulations and by-laws, and any requirements of any statutory bodies or local authorities;
- 1.13. “Works” shall mean the minor works and other services, labour and materials (if any) to be provided by the Contractor to fulfil the requirements of the Contract as more fully described in the Contract.

## **2. APPLICATION OF TERMS**

- 2.1. The Contractor shall provide and the Company shall purchase the Works subject to these conditions.
- 2.2. These conditions shall apply to the Contract to the exclusion of any other terms and conditions.
- 2.3. No variation to the Contract shall be effective unless agreed in writing by the Company Representative.

## **3. CONTRACTOR’S GENERAL OBLIGATIONS**

- 3.1. The Contractor shall, subject to the provisions of the Contract, design, supply, deliver, install, test, maintain and execute the Works.
- 3.2. The Works shall be of satisfactory quality and free from any defects in materials or workmanship or design.
- 3.3. The Works shall conform with any Specification, drawings and descriptions contained or referred to in the Contract.

## **4. PROGRAMME OF THE WORKS**

- 4.1. The date of commencement of the Works and the date by which the Works are to be completed shall be specified in the Purchase Order unless agreed otherwise between the Company and the Contractor. In the absence of any date being specified, the Works shall be completed as soon as practicable. Time shall be of the essence. The Contractor shall furnish such programmes for the carrying out of the Works as the Company may reasonably require and the Contractor shall give notice to the Company as soon as practicable if progress in accordance with such programmes is or is likely to be delayed. The Company has the right to instruct the Contractor to take such action as is required to complete the Works on time at no extra cost to the Company save where the Company has caused delay.
- 4.2. If the Contract provides for the Works to be subject to tests Completion shall not be deemed to have taken place until such tests have been performed in accordance with **clause 11** and have been passed to the reasonable satisfaction of the Company.

**5. VARIATIONS**

- 5.1. The Contractor shall be under an obligation to implement any request made by the Company for a variation to the Works. Within seven (7) days of the receipt of any written notice or such other period as the Company may request the Contractor shall notify the Company in writing of any proposed alteration to the Contract Price or to any other provisions of the Contract which would result from the variation (“the Contractor’s Notification”). The Company shall then either:
- (i) confirm the variation in writing within fourteen (14) days of the receipt of the Contractor’s Notification with such amendment to the Contract Price and to any other provisions as the Parties have agreed is reasonable in respect of the variation to the Works, or
  - (ii) withdraw the variation.
- 5.2. Subject to **clause 5.3** below the Contractor shall not proceed with any variation until it has received written confirmation from the Company in accordance with **clause 5.1(i)** above.
- 5.3. If exceptionally the Company decides that for reasons of urgency a variation must be carried out immediately, then the Company may instruct the Contractor accordingly either verbally or in writing and the Contractor shall forthwith carry out such instruction.. The procedure as set out in **clause 5.1** above shall then be invoked within seven (7) days of the issue of any such instruction. In default of agreement the Company shall issue such amendment as it may decide is reasonable subject to the right of the Contractor to refer the matter for decision at arbitration.

**6. CONTRACTOR’S WARRANTIES**

The Contractor warrants and undertakes to the Company that:-

- 6.1. the Contractor shall carry out the Works with the skill to be expected of a Contractor experienced in the types of work to be carried out under the Contract and in accordance with Best Industry Practice;
- 6.2. the Contractor shall commence and complete the Works by the date(s) as specified in the Purchase Order or in any of the documents comprising the Contract;
- 6.3. the Contractor has full right, power and authority to provide the Works to the Company within the terms of the Contract;
- 6.4. the Contractor is fully experienced, financed, qualified, equipped and organised to perform its obligations under the Contract;

- 6.5. the Contractor shall carry out the Works with sufficient number of personnel as are necessary and who shall have the necessary training, qualifications and experience;
- 6.6. the Contractor shall comply with all Statutory Requirements, all regulations relating to the performance of the Works and all rules applying to the Site;
- 6.7. any materials supplied and/or installed by the Contractor as part of the Works shall be fit for purpose and shall remain fit for purpose for 12 months from the date of Completion provided that then the Contractor’s liability shall be reduced or extinguished (as the case may be) to the extent that any defects or failure in the Works results from damage suffered after Completion, fair wear and tear, failure by the Company to maintain the Works in accordance with any recommendations of the Contractor made known to the Company, or negligent use.

**7. TERMINATION**

- 7.1. The Company may terminate the Contract by giving to the Contractor not less than 30 days’ written notice at any time.
- 7.2. A party (“the Non-Defaulting Party”) may terminate the Contract with immediate effect by giving written notice to the other party (“the Defaulting Party”) on or at any time after the occurrence of an event specified in **clause 7.3**.
- 7.3. These events are:-
  - 7.3.1. either party is in material breach of any of its obligations and that breach cannot be remedied; or
  - 7.3.2. either party is in material breach of its obligations and that breach can be remedied but such party fails to do so within 10 days starting on the day after receipt of written notice from the other party; or
  - 7.3.3. either party commits more than one breach of its obligations and the cumulative effect of such breaches is such that the Non-Defaulting Party believes that the Defaulting Party will continue to deliver a substandard performance over the one month period immediately after the service of notice specified in **clause 7.3.2**; or
  - 7.3.4. either party makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or bankruptcy or an encumbrancer takes possession or a receiver is appointed, of any of its property or assets; or

7.3.5. the Non-Defaulting Party reasonably believes that one of the events mentioned above is about to occur and notifies the other accordingly.

7.4. In the event of termination of the Contract by the Company under **clause 7.1** above the Contractor shall be entitled to recover from the Company all monies due for Works satisfactorily completed prior to such termination.

7.5. In the event of termination under **clause 7.2** above, the Contractor shall be entitled to payment of the Contractor's direct and unavoidable committed costs reasonably arising as a result of termination, provided notice of such costs owed is given to the Company within 7 days of such termination.

7.6. The provisions of **clauses 6, 8, 18, 21 and 23** shall survive any termination of the Contract.

## **8. CONFIDENTIALITY**

8.1. All Confidential Information supplied to the Contractor by the Company at any time in connection with the Contract:

8.1.1. is and remains the Company's property and must be returned to the Company on request;

8.1.2. shall not without prior written consent of the Company be published or disclosed to any third party or used by the Contractor except for the purpose of carrying out the Works or to the extent that it is or becomes public knowledge through no fault of the Contractor.

8.2. Confidential Information shall be disclosed only to those directors, partners, staff and/or sub-contractors of the Contractor who have a reasonable need to see and use it to fulfil the Contract. The Contractor shall procure that those persons having access to Confidential Information shall be subject to the same obligations of confidentiality and shall take all reasonable steps to ensure that directors, partners, staff and/or sub-contractors are made aware of and comply with such obligations.

8.3. The above restriction as to disclosure and use shall not apply to Confidential Information which:-

8.3.1. the Contractor can demonstrate by documentary evidence as being in its possession prior to its disclosure by the Company and is not subject to any other obligations of confidentiality; or

8.3.2. is required to be disclosed by law, regulation or pursuant to an order of a competent authority; or

8.3.3. at the time of receipt by the Contractor, is in the public domain other than as a result of breach of this **clause 8.3** by the Contractor.

8.4. The obligations on the Contractor under this clause shall remain in force notwithstanding completion, cancellation or termination of the Contract.

## **9. PRICE AND PAYMENT**

9.1. In consideration of the Contractor carrying out the Works, the Company shall pay to the Contractor the Contract Price calculated in accordance with the schedule of rates provided in the Contract which, unless otherwise so stated, shall be:

9.1.1. fixed;

9.1.2. exclusive of any applicable VAT; and

9.1.3. inclusive of all taxes other than VAT.

9.2. Value Added Tax or other taxes relevant to the Works, as applicable, shall be shown separately on all invoices as a strictly net extra charge.

9.3. Payment in consideration of the Works which have been carried out, inclusive of Value Added Tax, will be effected at the end of the second month following the month in which the Company receives a valid invoice after either

- (i) Completion has taken place; or
- (ii) where regular or stage payments have been agreed in the Contract, an agreed stage is reached.

9.4. A valid invoice will include the Contractor's name, address, VAT number, a reference to the Purchase Order number and support invoices and receipts and, when applicable, a record of time expended on the Works by the Contractor.

9.5. In the event that all or any part of an invoice is reasonably disputed, the Company shall within 20 days of receipt notify the Contractor of its reasons for disputing such invoice. The parties shall in good faith promptly exercise all due diligence in order to resolve the dispute. The Company shall make payment of all items other than disputed items.

## **10. INCLUSIONS IN CONTRACT**

10.1 The Contractor is deemed to have understood the nature and extent of the Works and to have inspected the Site (including ground conditions and any existing structures). No failure on the part of the Contractor to discover or foresee any Site conditions, or any failure to discover or foresee any risks, contingencies or circumstances (whether the same ought reasonably to have been discovered or not) shall entitle the Contractor to claim an additional sum or damages or an extension of time to enable the Contractor to complete the Works.

10.2 Unless otherwise specified, the Contractor shall provide all plant, scaffolding, tools, material, labour,

haulage and other things necessary to complete the Works.

10.3 Unless otherwise agreed, the Contractor shall be responsible for obtaining all those consents, licenses and permits from any relevant authority which are necessary for the carrying out of the Works including and without prejudice to the generality of the foregoing planning permission and building regulation approval and the Contractor shall comply with the same.

## **11. TESTING AND INSPECTION**

11.1. Tests shall be carried out in accordance with the provisions of the Contract in the presence of, and at times to be agreed by, the Company.

11.2. If any part of the Works fails to pass the tests, defects revealed by such tests shall be notified by the Company to the Contractor and shall be rectified by the Contractor in accordance with **clause 12**.

11.3. Tests shall, if required by the Company or by the Contractor, be repeated within a reasonable time upon the same terms and conditions until the Company is reasonably satisfied with the Works.

11.4. Completion shall take place upon the Company certifying in writing that any tests required under the Contract have been passed and that the Company is reasonably satisfied that the Works have been completed in accordance with the provisions of the Contract.

## **12. DEFECTS**

12.1. If, upon testing in accordance with **clause 11**, or at any other time before Completion, the Company shall decide that any Works are not in accordance with the Contract or are otherwise defective (all such matters being hereinafter in this clause referred to as "Defects"), the Company shall as soon as reasonably practicable give to the Contractor notice in writing of the said decision specifying particulars of the Defects alleged and of where the same are alleged to exist or to have occurred, and so far as may be necessary require the Contractor to rectify the Works.

12.2. If the Contractor shall fail to rectify the Works within a reasonable time so that the Works conform to the Contract the Company may, at the Contractor's cost, take such steps as may in all the circumstances be reasonable to make good such Defects and the Company shall be entitled to charge the Contractor the cost thereof. The provisions of this **clause 12.2** are without prejudice to any other rights or remedies of the Company.

## **13. SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND DESIGNS**

13.1. To the extent that the Contract provides for the Works to be executed including the Contractor's or its

subcontractor's designs and specifications, the Contractor accepts responsibility for such design necessary for the execution of the Works (including any design work prepared before or after the date of the Purchase Order and whether carried out by or on behalf of the Company or the Contractor) and for any error, mistake, inaccuracy or discrepancy contained in the same, provided that the Contractor shall not be liable for any design provided by the Company if the Contractor objects to it prior to carrying out the Works. The Contractor shall be responsible for the cost of any subsequent rectification of the Works as shall be necessary as a result thereof unless the errors and omissions are due to inaccurate information provided by the Company.

13.2. Any specifications, plans, drawings, or designs supplied by the Company to the Contractor in connection with the Contract or provided by the Contractor under the Contract shall be the property of the Company and any information derived therefrom or otherwise communicated to the Contractor in connection with the Contract or produced by the Contractor under the Contract shall be held by the Contractor as secret and confidential and shall not, without the consent in writing of the Company, be published or disclosed to any third party, or made use of by the Contractor except for purpose of implementing the Contract.

## **14. SITE RESPONSIBILITIES**

14.1. The Company shall afford access to so much of the Site as is necessary for the performance of the Works, but such access may not be exclusive to the Contractor and it shall, as directed by the Company, allow others to work on the Site and afford them all reasonable facilities to do so.

14.2. The Contractor shall be responsible for receiving and offloading all deliveries to the Site, for storage and for all demurrage.

14.3. Upon Completion the Contractor shall remove from the Site all constructional plant, accommodation, rubbish and temporary works of every kind, and leave the Site and the Works in a clean and tidy condition to the satisfaction of the Company.

14.4. The Contractor shall use all reasonable means to prevent damage to any highway or bridge on the routes to the Site by any traffic of the Contractor or any sub-contractor.

14.5. The Contractor shall at all times prevent any nuisance or trespass (including, but without limitation, any noisy working operations, or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of the owner, or any tenant or occupier of the Site or any adjoining land, arising out of the Works, and shall fully indemnify the Company in relation to any claims

and legal fees (on an indemnity basis) arising out of any failure in performing this obligation and shall assist the Company in defending any action or proceedings which may be instituted in relation thereto.

- 14.6. As soon as, in the opinion of the Company, the Works have been substantially completed and have satisfactorily passed any tests, or where the Company waives its right to have any tests completed, the Company shall, on receiving a written undertaking by the Contractor to finish any outstanding work issue a certificate in respect of the Works, or any part thereof.

## **15. SITE REGULATIONS**

- 15.1. The Company shall have the right to require the removal of any person brought to the Site by the Contractor who:
- 15.1.1. has failed to comply with any rule(s) applying to the Site; or
- 15.1.2. has in the opinion of the Company committed an act of misconduct or been negligent or incompetent; or
- 15.1.3. acts in a way that is prejudicial to health and/or safety and any such person shall not be allowed to return without the permission of the Company.
- 15.2. The Contractor shall be responsible for the suitability and safety of any constructional plant or temporary works used. No constructional plant or temporary works shall be used which may be unsuitable, unsafe or liable to cause damage or injury.
- 15.3. The Contractor shall ensure safe working practices for its own employees under the provisions of the Health and Safety at Work Act 1974 and all other Statutory Requirements and other regulations and must pay due regard to the safety of all persons on Site in accordance with ss3-4 of the Health and Safety Act 1974 and all other Statutory Requirements and other regulations.
- 15.4. The Contractor and its subcontractors (if any) shall observe the hours and conditions of working unless notified otherwise.

## **16. INDEPENDENT CONTRACTOR**

- 16.1. The Company and the Contractor agree and declare that the Contractor (which shall be deemed to include its employee's agents and sub-contractors) is an independent contractor and not an employee or partner of the Company.
- 16.2. The Contractor undertakes to pay all remuneration due (including sick pay and holiday pay) to its employees engaged in the performance of the Contract.

- 16.3. The Contractor shall fully indemnify the Company against all and any claims made by any of its employees against the Company arising out of any allegation by them that they are employees of the Company including (without prejudice to the generality of the foregoing) any claims for unfair dismissal and/or redundancy arising out of the termination of this Contract, and shall indemnify the Company for any legal fees incurred in defending such claims on an indemnity basis.

## **17. TAXES**

- 17.1. The Contractor shall be responsible for all taxes payable in relation to or by reference to any payments or other remuneration made under the Contract.
- 17.2. The Contractor shall indemnify the Company in full against any and all such taxes (including, without limitation) any PAYE and national insurance contributions (and any interest, fines or penalties thereon) assessed or levied against the Contractor or subcontractor in the course of the performance of the Works.

## **18. INTELLECTUAL PROPERTY RIGHTS**

- 18.1. The Contractor acknowledges that any and all of the IPR created, developed, subsisting in or used in connection with the Contract and the performance of the Works shall be and remain the sole property of the Company.

## **19. CONFLICT OF INTERESTS**

- 19.1. The Contractor shall not without the prior written consent of the Company accept or subcontract work from any other party which would create a conflict of interest.

## **20. MAINTENANCE PERIOD**

- 20.1. The Contractor shall at its own cost for a period of twelve months from the date of Completion maintain the Works in good and proper order, repair and condition, and shall rectify all defects arising from improper or defective materials or workmanship.
- 20.2. If it is necessary for the Contractor to repair or replace any part of the Works, the provisions of **clause 20.1** shall apply to such parts of the Works so repaired or replaced until the expiration of twelve months from the date of such repair or replacement.
- 20.3. In the event that the Contractor cannot or does not respond within a reasonable time to rectify any such defects or failures the Company may carry out the repair or replacement and shall be entitled to reimbursement by the Contractor for reasonable cost necessarily incurred in connection therewith. Such action shall not relieve the Contractor of its continuing obligations under the Contract.

**21. LIABILITY AND INDEMNITY**

- 21.1. The Contractor shall take full responsibility for the Works from the date of commencement until Completion and shall make good to the reasonable satisfaction of the Company any damage thereto however caused which occurs prior to Completion or which arises after Completion but prior to the end of the maintenance period as a result of any act or omission of the Contractor either before or after Completion.
- 21.2. The Contractor shall indemnify and keep indemnified the Company in full against all liabilities, losses, claims, demands, proceedings, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- 21.2.1. any act or omission of the Contractor or its employees, agents or sub-contractors in performing the Works and remedying any defects therein including any loss or damage to property (including the Company's property) and any death, injury, loss or damage to persons, caused or contributed to by any of their negligence (except to the extent that the injury loss or damage is caused by the negligent act or omission of the Company);
- 21.2.2. breach of any warranty given by the Contractor in relation to the Works;
- 21.2.3. any claim that the performance of the Works infringes the intellectual property rights of any other person except to the extent that the claim arises from compliance with the Contract and instructions given by the Company; and
- 21.2.4. any claim made against the Company in respect of any breach or alleged breach by the Company of any statutory provision, regulation or bye-laws or other rule of law arising from the acts or omissions of the Contractor or its employees, agents or subcontractors.
- 21.3. The Contractor shall have no liability to the Company for any damage or injury to any persons which result from any unlawful or negligent act or omission of the Company, its servants or agents, or any other supplier (not being employed directly or indirectly by the Contractor). The Company shall indemnify the Contractor against any claims, costs, demands and expenses arising from any act or neglect of the Company, its servants or agents.

**22. CONSEQUENTIAL LOSS**

Except as provided for under the Contract the Contractor shall not be liable to the Company for loss of profits, loss of business or any other indirect or consequential damages arising out of the Contract.

**23. INSURANCE**

- 23.1. The Contractor shall have in force and shall require any subcontractor to have in force the following insurances that shall extend to indemnify the Company against any claim for which the Contractor or subcontractor may be liable under the Contract:
- 23.1.1. Employer's liability insurance and insurance against accident or injury to work people; and
- 23.1.2. Public liability (Third Party) insurance for such sum and range of cover as the Contractor deems appropriate but for an indemnity of not less than £5 million for any one accident or event; and
- 23.1.3. Insurance of the Works and any constructional plant, personal effects or any other property of the Contractor or subcontractor which shall extend to include damage which the Contractor is responsible under its obligation to repair and make good.
- 23.2. The Contractor shall furnish the Company with certificates of insurance evidencing cover prior to the commencement of the Works or immediately upon receipt of a request from the Company. All such policies maintained or procured shall contain a waiver of subrogation against the non-insuring party, its affiliates, the Contractor's sub-contractors and their respective officers, directors and employees.

**24. ASSIGNMENT AND SUB-CONTRACTING**

- 24.1. The Contractor shall not assign or sub-contract the Contract without the consent of the Company, which consent shall not be unreasonably withheld. In any event, the Contractor shall not be relieved of the responsibility under the Contract for such parts of the Works as are sub-contracted and the Contractor shall be responsible and liable for the acts or defaults of any subcontractor or their employees, servants and agents, as fully as if they were the acts or defaults of the Contractor or the Contractor's employees, servants and agents and for all materials and/or goods supplied by any subcontractor.
- 24.2. The Contractor shall ensure that any sub-contracts shall contain such provisions of this Contract as should be made applicable to such sub-contracts.
- 24.3. The Company has the right to assign the Contract.

**25. HEALTH, SAFETY AND ENVIRONMENT**

The Works will be undertaken in accordance with the latest version of the Company's standard health, safety and

environmental policies and procedures (available on request).

**26. QUALITY ASSURANCE**

26.1. The Contractor has and shall continue to have in place an established, documented and maintained Quality Assurance system which is based on, or meets the requirements of the ISO 9000 series of standards.

26.2. The Company shall have the right to carry out quality audits of the Contractor and its subcontractors. The Contractor shall provide the required facilities and assistance to Company with respect to execution of such audits.

**27. FORCE MAJEURE**

27.1. Neither party shall have any liability or responsibility for failure to fulfil any obligation under the Contract so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

27.2. A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event:

- 27.2.1. notify the other party of the nature and extent of such Force Majeure Event; and
- 27.2.2. use all reasonable endeavours to remove any such causes and resume performance under the Contract as soon as feasible.

27.3. For the purposes of this **clause 27**, a Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

**28. COMPLIANCE**

**28.1 Anti-Bribery**

- 28.1.1 The Contractor shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010;
  - (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (c) have and shall 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, and will enforce them where appropriate; and

- (d) promptly report to Company any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the Works.

28.1.2 The Contractor shall ensure that any person associated with the Contractor who is performing services under or in connection with this 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 Contractor, the relevant terms in clause 28.1.1. The Contractor shall be responsible for the observance and performance by such persons of the relevant terms, and shall be directly liable to Company for any breach by such persons of any of the relevant terms. Any such breach shall be a material breach, and in the case of a breach of clauses 28.1.1(a) or 28.1.1(b) shall be a material breach that is incapable of remedy.

28.1.3 For the purpose of this clause 28.1, 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 that Act). For the purposes of this clause 28.1, a person associated with the Contractor includes any member of the Contractor group.

**28.2 Modern Slavery**

- 28.2.1 The Contractor undertakes, warrants and represents that:
- (a) neither it nor any of its officers, employees, agents or subcontractors:
    - (i) has committed an offence under the Modern Slavery Act 2015 (an “MSA Offence”); or
    - (ii) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
    - (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
  - (b) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and
  - (c) it shall notify Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Contractor’s obligations under clause 28.3. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Contractor’s obligations.

- 28.2.2 The Contractor shall take all reasonable steps necessary to ensure:
- (a) its supply chain complies with the Modern Slavery Act 2015 and the modern slavery policy; and
  - (b) it has the right to audit the supply chain to ensure such compliance.

28.2.3 The Contractor shall prepare and deliver to Company no later than 28 February each year, an annual statement setting out the steps it has taken to ensure slavery and human trafficking is not taking place in any part of its business or in any of its supply chains.

### **28.3 Data Protection**

28.3.1 Each party shall comply with Data Protection Law as may be applicable from time to time to the shared personal data and the provisions of this clause 28.3 shall not relieve the Contractor of its own responsibilities under Data Protection Law.

28.3.2 Company shall provide the shared personal data to the Contractor. The Contractor shall process shared personal data only for the agreed purpose. The Contractor shall not process shared personal data in a way that is incompatible with the agreed purpose.

- 28.3.3 Each party agrees that it shall:
- (a) assess the level of security appropriate to the processing in the context of its obligations under Data Protection Law; and
  - (b) implement all such appropriate technical and organisational measures to protect against unauthorised or unlawful processing and against accidental loss, destruction or damage to shared personal data.

28.3.4 The Contractor shall indemnify Company in full for any and all costs, losses, damages, expenses and liabilities suffered by Company as a result of the Contractor's failure to comply with the terms of this clause 28.3 and/or any Data Protection Law.

### **28.4 Material Breach**

Any breach of clauses 28.1, 28.2, or 28.3 by the Contractor shall be deemed a material breach of the Contract that is not capable of remedy and shall entitle Company to terminate the Contract with immediate effect

## **29. GENERAL PROVISIONS**

29.1. The Contract shall constitute the entire agreement between the parties in relation to the subject matter of the Contract and supersedes any previous agreements, representations and commitments, whether oral or in

writing, between the parties concerning such subject matter.

29.2. No modifications, renewal, extension or waiver to or of the Contract or any of its provisions shall be effective unless agreed in writing by the parties or in accordance with **clause 5** of these conditions.

29.3. Any notice to be given by either party to the other under the Contract must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

29.4. Notices addressed to the Company shall be marked for the attention of the Procurement Manager.

29.5. Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.

29.6. A notice is deemed to have been received:

- 29.6.1. if delivered personally, at the time of delivery;
- 29.6.2. if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
- 29.6.3. If sent by facsimile transmission, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.

29.7. Any waiver by the Company of any breach is not a waiver of any subsequent breach.

29.8. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.

29.9. If any of the provisions of the Contract shall be found to be invalid or unenforceable, the Contract shall remain valid but shall be construed as not containing the particular invalid or unenforceable provision.

29.10. The Contract does not create, confer or purport to confer any benefit or right enforceable by any person who is not a party to it by virtue of the Contract (Rights of Third Parties) Act 1999.

29.11. Nothing in the Contract shall be construed as establishing the Contractor or any employee of the Contractor as an employee of the Company. Nothing in this Agreement shall create a partnership, agency or joint venture between the Company and the Contractor.

## **30. APPLICABLE LAW AND LOCAL REGULATIONS**



The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.