

# Conditions of Purchase



## PART 2 - TERMS AND CONDITIONS

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** 9:00am to 5:00pm on a Business Day.

**Charges:** the charges payable by Nest for the supply of the Services and/or Goods by the Supplier, as set out in the Order Form.

**Commencement Date:** has the meaning given to it in the Order Form.

**Contract:** has the meaning given to it in the Order Form.

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

**Controller:** has the meaning given to it in the UK GDPR.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Default:** any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including Material Default),

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act, omission, negligence or statement of the Supplier, of its subcontractors or any Supplier staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to Nest.

**Deliverables:** all documents, products and materials and other outputs of the Services provided by the Supplier or its agents, subcontractors and personnel as part of, or in relation to, the Services in any form, including the Deliverables set out in the Order Form.

**Discretionary Exclusion Ground:** any of the circumstances listed in Schedule 7 of the Procurement Act;

**EIRs:** the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any central Government body in relation to such Regulations;

**Excludable Supplier:** a Supplier where a Discretionary Exclusion Ground applies to that Supplier or a Key Sub-Contractor;

**Excluded Supplier:** a Supplier where a Mandatory Exclusion Ground applies to that Supplier or a Key Sub-Contractor;

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant central Government body in relation to such Act.

**Good Industry Practice:** using standards, practices, methods and procedures complying in full with all applicable laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a leading and expert supplier of services similar to the Services to a customer similar to Nest.

**Goods:** any and all of the goods to be provided by the Supplier pursuant to this Contract, including those set out in the Order Form and any applicable Schedule.

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

**Key Sub-Contractor** means an organisation on which the Supplier relied in order to satisfy any “conditions of participation” (as defined in the Procurement Act) prior to award of this Contract to the Supplier.

**Law:** any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice,

judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

**Mandatory Exclusion Ground:** any of the circumstances listed in Schedule 6 of the Procurement Act;

**Material Breach:** a breach of the Procurement Act that Nest considers could reasonably result in a successful legal challenge under Part 9 of the Procurement Act.

**Material Default:** a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied);

**Nest Background IPRs:** (i) IPRs owned by Nest before the Commencement Date, including IPRs contained in any of Nest's know-how, documentation, processes and procedures; and (ii) IPRs created by NEST independently of this Contract.

**Nest Materials:** Nest Background IPRs and Nest's data (including Nest Personal Data) together with any software, equipment, materials, documentation, information, programs and supplied by Nest to the Supplier, the IPRs in which: (i) are owned or used by or on behalf of Nest; and (ii) are or may be used in connection with the provision or receipt of the Services.

**Nest Personal Data:** any Personal Data which the Supplier processes in connection with the Services, in the capacity of a processor on behalf of NEST.

**Payment Compliance Notice:** a notice that Nest is required to publish to comply with Section 69(1) of the Procurement Act.

**Personal Data:** has the meaning given to it in the UK GDPR.

**Procurement Act:** the Procurement Act 2023, as amended from time to time, and any regulations made under it.

**Request For Information** means a request for information or an apparent request under FOIA or the Environmental Information Regulations;

**Schedules:** has the meaning given to it in the Order Form, and "Schedule" shall be interpreted accordingly.

**Services:** any and all of the services to be provided by the Supplier pursuant to this Contract, including those set out in the Order Form and any applicable Schedule(s) and the provision of the Deliverables.

**Section 71 Notice:** a notice that Nest is required to publish to comply with Section 71(2) and Section 71(5) of the Procurement Act.

**Supplier IPRs:** (i) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's know-how or generic business methodologies; and/or (ii) Intellectual Property Rights created by the Supplier independently of this Contract, which in each case is or will be used before or during the Term for providing the Services.

**Term:** has the meaning given to it in the Order Form.

**T&Cs:** has the meaning given to it in the Order Form.

**UK GDPR:** the retained EU law version of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018.

**VAT:** value added tax as provided for in the Value Added Tax Act 1994, or any other analogous or replacement tax.

## **1.2 Interpretation:**

- (a) the Schedules form part of these T&Cs and shall have effect as if set out in full in the body of these T&Cs. Any reference to these T&Cs includes the Schedules;
- (b) the singular includes the plural and vice versa;
- (c) a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law;
- (d) a reference to writing or written includes email but not fax.
- (e) any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (f) references to clauses and Schedules are to the clauses and Schedules of these T&Cs and references to paragraphs are to paragraphs of the relevant Schedule; and
- (g) the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".
- (h) In the case of the Supplier providing various individuals or the Individual to perform consultancy services, references to the Supplier in these T&Cs shall include references to such individuals or the Individual (as applicable).

## **2. Commencement and term**

- 2.1 The Supplier shall provide the Services in accordance with this Contract, from the Commencement Date until the end of the Term, unless terminated earlier in accordance with clause 11 or the relevant Schedule (as applicable).

## **3. Supply of services**

- 3.1 In performing the Services and/or delivering any Goods, the Supplier shall meet, and time is of the essence in relation to, any dates or milestones for performance as specified in the Order Form or relevant Schedule.
- 3.2 The Supplier shall:
  - (a) ensure that the Services and Deliverables will conform in all respects with this Contract, and that the Deliverables shall be fit for any purpose made known to the Supplier by Nest;

- (b) perform the Services with all due care, skill and ability and in accordance with Law and Good Industry Practice;
- (c) ensure that the Deliverables, and all Goods, materials, standards and techniques (as applicable) used in providing the Services and Deliverables are of the suitable and appropriate quality and are free from defects in installation and design;
- (d) co-operate with Nest in all matters relating to the Services and comply with Nest's reasonable instructions at all times, including in relation to any rules, regulations, policies or security requirements required by Nest as further detailed in any applicable Schedule(s);
- (e) obtain and maintain during the Term, all necessary licences and consents and comply with all relevant Law in relation to the Services and Goods (as applicable);
- (f) hold all Nest Materials in safe and secure custody at its own risk (with security measures at least as comprehensive as those applied to the Supplier's own materials of a similar or equivalent nature, or such security measures as detailed in any applicable Schedule, whichever is more onerous);
- (g) not knowingly or negligently do or omit to do anything, which may cause Nest to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its public role or functions;
- (h) notify Nest in writing immediately upon the occurrence of a change of Control of the Supplier;
- (i) appoint or, at the request of Nest replace, without delay a manager, who shall have authority to contractually bind the Supplier on all matters relating to the Services and/or Goods (as applicable). The initial manager shall be the Supplier's Manager as set out in the Order Form;
- (j) only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient and appropriate number to ensure that the Supplier's obligations are fulfilled;
- (k) warrants either:
  - (i) none of the Mandatory Exclusion Grounds apply to the Supplier or any Key Sub-contractor; or
  - (ii) in the event that one or more Mandatory Exclusion Grounds applies to a Key Sub-Contractor, the Supplier has notified Nest as soon as reasonably practicable and has complied with clause 14.2(b); and
- (l) warrants either:
  - (i) none of the Discretionary Exclusion Grounds apply to the Supplier or a Key Sub-Contractor; or
  - (ii) in the event that one or more of the Discretionary Exclusion Grounds applies to the Supplier or a Key Sub-Contractor, the Supplier has notified Nest as soon as reasonably practicable; and

- (iii) Nest has not exercised its right to treat the Supplier as an Excludable Supplier or (where the Discretionary Exclusion Ground relates to a Key Sub-Contractor) the Supplier has exercised its right to replace that Key Sub-Contractor in accordance with clause 14.2(b).

#### **4. Nest's obligations**

- 4.1 Nest shall provide such necessary information for the provision of the Services and/or Goods (as applicable) as the Supplier may reasonably request, to the extent such information is available to Nest and authorised for release.

#### **5. Title to Deliverables and Nest Materials**

- 5.1 Title to any Goods (if applicable) or Deliverables that are Goods, or in any physical media on which Deliverables are stored, and/or title to any Goods or materials transferred to Nest as part of the Services shall pass to Nest (free from all liens, charges and encumbrances) on the earlier of their delivery to Nest or payment of the Charges for them.

#### **6. Data Protection**

- 6.1 To the extent that the Supplier processes Personal Data for and on behalf of Nest or otherwise in connection with the Contract, Schedule 7 (Data Protection) shall apply, whether or not such Schedule has been appended at Part 3 to the Contract.
- 6.2 Where either party processes Personal Data of the other party comprising of business contact details for the purposes of the management and administration of the Contract, or otherwise processes Personal Data in connection with the Contract as a Controller, such party shall comply with its respective obligations under the Data Protection Legislation.

#### **7. Intellectual property**

- 7.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. Nest and its licensors shall retain ownership of all IPRs in Nest Materials.
- 7.2 The Supplier grants Nest, or shall procure the direct grant to Nest of, a worldwide, non-exclusive, royalty-free, licence to use, copy, modify and sub-lodge the Supplier IPRs for the purpose of receiving and using the Services and/or Goods (as applicable) during the Term and for the duration of any exit assistance services provided under Schedule 8 (Exit) (if applicable).
- 7.3 Nest grants the Supplier a non-exclusive, royalty-free, non-transferable licence to use Nest Materials for the Term for the sole purpose of, and to the extent necessary for, providing the Services to Nest in accordance with the Contract.
- 7.4 The Supplier shall indemnify Nest 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 reasonable professional costs and expenses) suffered or incurred by Nest arising out of or in connection with any claim brought against Nest for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services and/or Goods (as applicable) by Nest and its licensees and sub-licensees. This clause 7.4 shall survive termination of the Contract.

- 7.5 The Supplier hereby assigns to Nest, with full title guarantee and free from all third party rights, all IPRs in the Deliverables and the Supplier shall where possible, obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction. The Supplier shall, promptly at Nest's reasonable request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Nest may from time to time require for the purpose of securing for Nest all right, title and interest in and to the Intellectual Property Rights assigned to Nest in accordance with clause 7.
- 7.6 The Supplier warrants that the Deliverables (excluding Nest Materials) shall not infringe the rights, including any Intellectual Property Rights, of any third party.

## **8. Charges and payment**

- 8.1 In consideration of the provision of the Services and/or Goods by the Supplier, Nest shall pay the Charges as set out in the Order Form and/or applicable Schedule, and in accordance with any payment schedule set out in the Order Form or Schedule (as applicable), following receipt of a valid invoice which includes the correct purchase order number. The Charges agreed and set out in the Order Form shall be deemed to be a fixed price for the Services, save as set out in the Order Form and/or in Schedule 4 (Charges), unless the parties agree otherwise in writing.
- 8.2 Nest shall pay each valid, undisputed and duly payable invoice submitted to it by the Supplier within **30** days of receipt to a bank account nominated in writing by the Supplier.
- 8.3 Nest may retain or set-off payment of any amount owed to it by the Supplier upon written notice.

## **9. Limitation of liability<sup>1</sup>**

- 9.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract, breach of statutory duty

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<sup>1</sup> Note: This clause sets out a standard liability position whereby the Supplier's liability under the Contract is capped at 125% of the contract value, and Nest's liability is capped at 125% of the contract value. This clause also excludes both parties' liability for consequential, indirect and/or special losses, but allows Nest to recover certain types of loss from the Supplier (such as loss of data). Any amendments to this clause would need to be drafted by Nest's legal team.

or in any other way whatsoever and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 9.

- 9.2 The Supplier's liability in respect of the indemnity at clause 7.4 and in respect of breaches of clause 14.3, shall be unlimited.
- 9.3 The Supplier's liability in respect of Schedule 7 (Data Protection) shall be as set out in Schedule 7 (Data Protection) (if applicable).
- 9.4 Subject to clauses 9.2 and 9.8, the Supplier's aggregate liability to Nest in respect of this Contract shall be limited to 125% of the Charges paid or due and payable under the this Contract).
- 9.5 Subject to clause 9.6, Nest's aggregate liability to the Supplier (howsoever arising, including in negligence) in respect of this Contract, shall be limited to 125% of the aggregate of the Charges paid to the Supplier during the 12-month period prior to the first cause of action giving rise to the relevant claim or series of connected claims.
- 9.6 Subject to clauses 9.7 and 9.8, neither party shall be liable under the Contract for consequential, indirect or special losses including loss of profit, revenue or business opportunity.
- 9.7 Notwithstanding clause 9.6 and without limiting its entitlement to recover other types of losses, the parties agree that Nest may recover the following from the Supplier as direct losses: (i) loss, corruption or damage to Nest Materials (to the extent such Nest Materials contain Nest data or Nest Personal Data), (ii) liability to third parties (including any compensation, fines and/or penalties payable) and (iii) damage to Nest's goodwill or reputation.
- 9.8 Notwithstanding any other provision of this Contract, neither the Supplier's nor Nest's liability under this Contract shall be limited in any way in respect of any losses which cannot be excluded or limited by Law.

## **10. Insurance**

- 10.1 During the Term, the Supplier shall maintain in force, with a reputable insurance company, all insurances as may be required by Law in relation to (i) its obligations and liabilities as set out in this Contract and (ii) the provision of the Services.

## **11. Termination**

- 11.1 Nest may terminate this Contract at any time by giving notice to the Supplier in the event that:
  - (a) the Supplier commits a material breach of this Contract and such breach is not remediable; or
  - (b) the Supplier commits a material breach of this Contract which is capable of remedy and which is not remedied within 30 days of receiving written notice of such breach.

- (c) Without affecting any other right or remedy available to it, Nest may terminate this Contract at any time by giving notice in writing to the Supplier if the Supplier:
- (i) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - (ii) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
  - (iii) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - (iv) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - (v) has a resolution passed for its winding up;
  - (vi) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - (vii) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - (viii) has a freezing order made against it;
  - (ix) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
  - (x) is subject to any events or circumstances analogous to those in clauses (i) to (ix) in any jurisdiction; or
  - (xi) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses (i) to (x) including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 11.2 Without prejudice to clause 11.1, Nest may by giving no less than the notice period specified in the Order Form, terminate the Contract where Nest considers that the Contract was awarded or modified in Material Breach of the Procurement Act.
- 11.3 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle Nest to terminate the Contract under this clause 11, it shall promptly notify Nest in writing.
- 11.4 Nest may terminate the Contract at any time by giving not less than 2 weeks' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it will undergo a change of Control within 2 months.

- 11.5 The Supplier may terminate this Contract by giving written notice to Nest if Nest fails to pay any undisputed amount due and payable under this Contract on the due date for payment and remains in default not less than 90 days after being notified in writing by the Supplier to make such payment.
- 11.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.
- 11.7 The parties acknowledge Nest's implied right to terminate the Contract under Section 78 of the Procurement Act.

## **12. Exit arrangements**

- 12.1 Following termination or expiry of this Contract, the Supplier shall ensure that:
  - (a) it ceases to use any Nest Materials, and that any Deliverables and Nest Materials are promptly delivered or returned to Nest;
  - (b) (at the discretion of Nest) it shall promptly and securely delete or destroy any Nest Materials (including back-ups) (unless storage of any data is required by Law, in which case the Supplier shall inform Nest of any such requirement and may only retain any Nest Materials strictly to the extent of such requirement);
  - (c) it provides all assistance reasonably required by Nest to facilitate the smooth transition of the Services under the Contract to Nest or any replacement supplier appointed by it, including by complying with the provisions of any applicable Schedule relating to exit arrangements; and
  - (d) it complies with Schedule 8 (Exit), where applicable.

## **13. Freedom of Information and Environmental Information Regulations**

- 13.1 The Supplier acknowledges that Nest is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - (a) provide all necessary assistance and cooperation as reasonably requested by Nest to enable Nest to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to Nest all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;
  - (c) provide Nest with a copy of all information held on behalf of Nest which is requested in a Request For Information and which is in its possession or control in the form that Nest requires within 5 Business Days (or such other period as Nest may reasonably specify) of AT's request for such information; and
  - (d) not respond directly to a Request For Information addressed to Nest unless authorised in writing to do so by Nest.

- 13.2 The Supplier acknowledges that Nest may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without

consulting or obtaining consent from the Supplier. Nest shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) Nest shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and EIRs.

## **14. General**

**14.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (which for the Supplier shall not include strikes or other industrial action by Supplier personnel or any personnel of other suppliers of the Supplier nor any risk insured by the Supplier as required under the T&Cs). If the period of delay or non-performance continues for 90 or more days continuously and the provision of the Services is materially and adversely affected, either may partially or fully terminate the Contract.

## **14.2 Subcontracting, assignment and novation.**

- (a) The Supplier may not assign, novate, subcontract or otherwise deal with any or all of its rights or obligations under the Contract without the prior written consent of Nest, to be at the sole discretion of Nest; and
- (b) If Nest consents to any subcontracting by the Supplier:
  - (i) the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own, and:
  - (ii) The Supplier shall notify NEST in writing within 3 Business Days of any changes that have occurred in relation to Key Sub-Contractor including whether the Key Sub-Contractor has been placed on the debarment list under Section 62 of the Procurement Act or whether a new excludable ground has arisen in respect of the Key Sub-Contractor in accordance with the Procurement Act, together with reasonable supporting information. Failure by the Supplier to notify Nest accordingly and/or providing Nest with information that is incomplete, inaccurate or misleading in relation to any Key Sub-Contractor shall entitle Nest to terminate the Contract and such termination shall be deemed to be termination due to Default on the part of the Supplier. The Supplier shall indemnify Nest against any losses sustained as a result of such Default.

## **14.3 Confidentiality**

- (a) Each party undertakes that it shall not at any time during this Contract and for a period of at least 5 years after termination or expiry of this Contract, disclose to any person any confidential information concerning

the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause (b).

- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and
  - (ii) as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

- 14.4 Entire agreement.** These T&Cs and the Order Form constitute 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. Nothing in this clause 14.4 shall exclude any liability in respect of misrepresentations made fraudulently.
- 14.5 Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.6 Waiver.** A waiver of any right or remedy under this Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Contract shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.7 No Partnership or Agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.8 Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

#### **14.9 Notices**

- (a) Notices under this Contract shall be in writing and sent to a party's representative whose contact details are as provided within the Order

Form and may be amended by written notice to the other party from time to time.

- (b) Notices may be given, and shall be deemed received:
  - (i) by first-class post: 2 Business Days after posting;
  - (ii) by email: at the time of transmission, or, if this time falls outside Business Hours, when Business Hours resume;
  - (iii) by hand: on delivery.
- (c) This clause does not apply to notices given in legal proceedings or arbitration.

#### **14.10 Third party rights**

- (a) Unless it expressly states otherwise, this Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- (b) The rights of the parties to rescind or vary this Contract are not subject to the consent of any other person who is not a party.

#### **14.11 Governing law and Jurisdiction.** This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.