

1. Definitions and Interpretations

1.1 In these Conditions the following apply:-

Anti-Bribery; means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption.

Business Day; means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Client; means the person, firm or party who engages with EA-RS to purchase the Goods and/or Services pursuant to a Contract.

Client Default; means a failure by the Client to meet any obligation under these Conditions, either by way of an act or an omission.

Commencement Date; has the meaning as set out in clause 2.10.

Conditions; means these terms and conditions set out in this document, as amended from time to time.

Confidentiality; has the meaning as set out in clause 17.

Contract; means any Contract agreement between EA-RS and the Client for the supply of Goods and/or Services, in accordance with these Conditions and the Contract Documents.

Contract Documents; means these Conditions, any quotation, Contract Price, proposal, scope of supply, technical overview, specifications, drawings and any other documents specified in writing by EA-RS.

Contract Price; has the meaning as set out in clause 8.1.

Deleterious Materials; means materials or substances not in conformity with any relevant British or European Standards or Codes of Practice or which are generally known to be deleterious to health and safety or to the durability of buildings in the particular circumstances in which they are used having regard to the guidance note "Good Practice in Selection of Construction Materials 2011" sponsored by the British Council for Offices.

EA-RS; means one of the following Group of companies

EA-RS Solutions Ltd trading as EA-RS, a company registered in England and Wales with company number 03543850 and whose registered address is 4 Swanbridge Industrial Park, Black Croft Road, Witham, Essex CM8 3YN.

Force Majeure Event; has the meaning as set out in clause 14.2.

GDPR; means the UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Goods; means the goods as set out in the Contract Documents which EA-RS is to supply the Client and as may be amended in accordance with clause 6.

Intellectual Property Rights; means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including knowhow and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in each case and any part of the world.

Order; means the Order placed by the Client which constitutes an offer by the Client to purchase the supply of Goods and/or Services in accordance with the Contract Documents.

Order Acknowledgement; means EA-RS written acceptance of the Clients Order.

Services; means the services as set out in the Contract Documents or Order Acknowledgement (as applicable) which EA-RS is to supply the Client and as may be amended in accordance with clause 6.

Third Parties; means any sub-contractors, consultants or other third parties engaged by EA-RS to provide the Goods and/or Services.

VAT; means Value Added Tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

Writing; means letter, facsimile transmission, electronic mail and comparable means of communication.

1.2 The headings in these Conditions are intended for reference only and shall not affect their interpretation.

1.3 In these Conditions (unless the context otherwise requires) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

1.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity

1.5 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.

1.6 Reference to "Parties" means the parties to this Contract and references to "a Party" mean one of the parties to this Contract.

1.7 A reference to a particular law is a reference to it, as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.8 In the event and only to the extent of any conflict between the Conditions and the Contract Documents, the Conditions shall prevail.
- 1.9 The rights and remedies of EA-RS described in this Contract shall be in addition and without prejudice to its other rights and remedies under this Contract and at law.

2. Basis of Contract and Acceptance

- 2.1 These Conditions shall apply in place of and prevail over any terms or conditions contained or referred to in any documentation submitted by the Client, in correspondence or elsewhere, or implied by trade custom, practice or course of dealing. For the avoidance of doubt these Conditions alone shall govern and be incorporated in every Contract for the provision of Goods and/or Services made by or on behalf of EA-RS.
- 2.2 These Conditions apply to the Contract and constitute the entire agreement between the Parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of EA-RS which is not set out in the Contract. No amendment to these Conditions shall become binding unless expressly agreed in writing between the authorised representatives of EA-RS and the Client.
- 2.3 Acceptance by the Client for the supply of Goods and/or Services shall be deemed to constitute unqualified acceptance of these Conditions.
- 2.4 Unless expressly stated within the Contract Documents, the Contract Price shall be valid for a period of maximum thirty (30) Business Days from its date of issue.
- 2.5 All samples, drawings, designs, descriptive matter, technical overviews, specifications, particulars of weight, size and dimensions issued by EA-RS, are to give an indication of the requirements for the supply of Goods and/or Services described in them. Only upon the consideration of an offer being issued will these requirements be actioned and finalised.
- 2.6 EA-RS will accept no responsibility and liability for any errors, omissions or other defects in any drawings, designs or specifications that have not been prepared by EA-RS.
- 2.7 It is the Client's fundamental sole responsibility to ensure that the supply of Goods and/or Services are fit for its intended purpose.
- 2.8 The Contract Documents for the supply of Goods and/or Services given by EA-RS shall not constitute an offer.
- 2.9 The Order constitutes an offer by the Client to purchase supply of Goods and/or Services in accordance with these Conditions. The Client is deemed to have read, understood, acknowledged and accepted these Conditions at the point of submitting their Order to EA-RS.
- 2.10 EA-RS shall reserve the right to not act upon an Order from the Client until it is issued in writing. The offer shall only be deemed to be accepted when EA-RS issues a written Order Acknowledgement, at which point the Contract shall come into existence ("**Commencement Date**").
- 2.11 No Order which has been accepted by the Client may be cancelled or otherwise amended by the Client except with the full agreement in writing of EA-RS and on terms that the Client shall indemnify EA-RS in full, against all loss (including loss of profit and other consequential loss), costs (including the cost of all labour, manufacture, materials used and third party services engaged, damages charges and expenses incurred by EA-RS) as a result of such cancellation or amendment.

3. Delivery and Performance of Goods and/or Services

- 3.1 With effect from the Commencement Date, EA-RS shall in consideration of the Contract Price being paid, provide the supply of Goods and/or Services in accordance with the Contract.
- 3.2 The quantity and description of the Goods and/or Services shall be as set out in the Contract and as amended in accordance with clause 6.
- 3.3 EA-RS shall ensure that each delivery of any Goods is accompanied by a delivery note which shows the date, all relevant Client and EA-RS reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if deliveries are by instalments, the outstanding balance of Goods remaining to be delivered.
- 3.4 Delivery, despatch dates or Service start dates mentioned in any Contract Documents or Order Acknowledgement (if applicable) or elsewhere are approximate only and not of any contractual effect. EA-RS will not be liable to the Client for failure to deliver Goods or commence the Services on a particular date(s). EA-RS shall use all reasonable endeavours to meet any performance dates mentioned, but time for delivery or performance is only an estimate and not of the essence of a Contract and shall not be made so by service of any notice. If no delivery, despatch or start dates are specified, delivery of the Goods or commencement of the Services shall be within a reasonable time.
- 3.5 EA-RS will arrange for transportation of the Goods to the Client's place of business. The Client shall meet the cost of any special packaging or delivery requested by the Client. The Client is solely responsible for the insurance of the Goods, the loading or unloading of the Goods at the point of delivery and their associated costs.
- 3.6 EA-RS may deliver the Goods and/or Services in one or more instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be treated as a separate Contract

and no cancellation or termination of any one Contract relating to an instalment shall entitle the Client to repudiate or cancel any other Contract or instalment

3.7 Unless the Goods are being supplied and installed by EA-RS as part of the Services (in which case the Client shall not be under any obligation to inspect the Goods), the Client shall inspect the Goods and all packaging immediately on delivery. Goods delivered may be rejected by the Client that do not comply with clause 12.1) provided that:

- a) None of the events listed in clause 12.2 apply.
 - b) In the case of any defect which would have been apparent on any reasonable inspection of the Goods, EA-RS is notified of the rejection within five (5) Business Days after delivery.
 - c) In the case of a latent defect (or in respect of Goods which are supplied and installed by EA-RS as part of the Services), EA-RS is notified of the rejection within a reasonable time of the defect having become apparent.
 - d) They are prior to the 12 month Warranty Period in accordance with clause 12.1c). Any defects after this period will be outside of warranty and additional costs apply.
- 3.8 The Client shall inspect and test the Goods and/or Services immediately upon receipt or completion and in any event prior to applying any process to, using, amending, treating or otherwise changing the Goods and/or Services and must notify EA-RS of any problem within five (5) Business Days. In the event that the Client fails to inspect and test the Goods and/or Services in accordance with clauses 3.7 and 3.8 then, notwithstanding any other terms in these Conditions, EA-RS shall be under no liability to the Client in respect of any defect whatsoever for the Goods and/or Services.
- 3.9 If for any reason the Client refuses to or fails to take delivery of any of the Goods or allow access for the performance of the Services or fails to take any action necessary on its part for delivery of the Goods or performance of the Services, EA-RS is entitled to terminate the Contract with immediate effect, to dispose of any Goods or cancel the Services as EA-RS may determine and to recover from the Client any loss or additional costs incurred as a result of such refusal or failure.
- 3.10 EA-RS shall not be liable for any costs incurred (for whatever reason) after delivery of the Goods is deemed to have taken place.
- 3.11 If EA-RS performance of any of its obligations in respect of the Services is prevented or delayed by any Client Default (acts or omissions) to perform any relevant obligation, then EA-RS shall:
- a) Without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client default and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent that the Client Default prevents or delays EA-RS' performance of any of its obligations.
 - b) EA-RS shall not be liable for any costs, damages, losses sustained or incurred by the Client arising directly or indirectly from EA-RS failure or delay to perform any of its obligations as set out in this clause b). The Client shall reimburse EA-RS on written demand for any costs or losses sustained or incurred by EA-RS arising directly or indirectly from the Client Default.
- 3.12 The Services will be deemed to have been completed upon the completion of the Services in accordance with the Contract, in each case as amended in accordance with clause 6.

4. Third parties

- 4.1 EA-RS shall reserve the right to source and procure the supply of Goods and/or Services from any third parties for the purpose of enabling EA-RS to perform its obligations under the Contract.
- 4.2 The Client acknowledges and agrees that EA-RS shall use sub-contractors, consultants, suppliers or other third parties to supply the Goods and/or Services to the Client and that the Goods and/or Services being supplied to the Client under a Contract are manufactured, supplied and/or provided by a third party independent of EA-RS.
- 4.3 Any reference in these Conditions to EA-RS shall be construed as a reference to "EA-RS and/or the Third Parties".
- 4.4 It is acknowledged that the Client may request that parts of the supply of Goods and/or Services be "Specified" as to define products, person, company, or sourced from a particular place. EA-RS will use reasonable endeavours to procure the supply of Goods and/or Services specified, provided however that the Client accepts full responsibility for the selection or suitability and this is acknowledged written within any Order.
- 4.5 The Client also agrees to be bound by any terms and conditions of supply as a result of the specified third party, which EA-RS brings to the attention of the Client.

5. Clients Obligations

- 5.1 To enable EA-RS to perform its obligations under the Contract, the Client Shall:-
 - a) Ensure that the terms of its Order and any applicable Contract are complete and accurate to the Contract Documents.
 - b) Fully work and cooperate with EA-RS to provide any information that it reasonably requires relating to the supply of Goods and/or Services.
 - c) Provide EA-RS and its employees, sub-contractors, consultants or other third parties with access to the Clients premises and any other facilities to enable EA-RS to undertake the supply of Goods and/or Services to be performed.
 - d) Provide EA-RS with copies of their health and safety, security or other policies and procedures with which EA-RS are required to comply with whilst on the Clients premises.
 - e) Obtain all necessary licences, permissions and consents which may be required before commencement of the Goods and/or Services.
 - f) Keep all documents, equipment, materials and other EA-RS property (including any loaned or rental kit and/or any other equipment not owned by, or being resold to, the Client) that is stored at the Client's premises safely and at its own risk and in the same condition as they were in when supplied and not dispose of or use any of the same without EA-RS prior written agreement.

5.2 If the progress and performance by EA-RS of its obligations under the Contract is prevented, hindered or delayed by any act or omission of the Client (including any breach of its obligations under this clause 5), then EA-RS shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

6. Changes to the Goods and/or Services

- 6.1 Any verbal requests from the Client to make changes to the supply of Goods and/or Services, must be followed up by a formal written request within five (5) Business Days. EA-RS is not obliged to carry out or act upon the verbal request unless it is in respect to a health and safety issue regarding the Goods and/or Services.
- 6.2 EA-RS shall have the right to make any changes to the supply of Goods and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and Services being supplied. EA-RS shall notify the Client in any such event.
- 6.3 If EA-RS discovers any discrepancy, inconsistency, or ambiguity within, or between, the documents forming the Contract or Order, EA-RS shall notify the Client of such discrepancy, inconsistency, or ambiguity, along with any proposals to resolve the matter so notified. On receipt of such notice the Client shall advise EA-RS on how to resolve the notified discrepancy, inconsistency or ambiguity, and compliance with this shall be treated as a change to the Goods and/or Services under the contract.
- 6.4 During the supply of Goods and/or Services, EA-RS may recommend and/or the Client may request change(s) or additions to the Goods and/or Services.
- 6.5 EA-RS shall advise the Client of any change to the Contract Price and the timescale for the supply of Goods and/or Services that apply to such changed or additional Goods and/or Services, and any other terms and conditions particular to the provision of such changed or additional Goods and/or Services.
- 6.6 EA-RS will be under no obligation to implement any changes unless and until EA-RS and Client have agreed in writing to the changes, including paying for any additional costs and this is reflected in an updated Contract Price.
- 6.7 Changes to the supply of Goods and/or Services shall be valued by EA-RS on a fair and reasonable basis, with reference to, where available and relevant, rates and prices defined in Contract.
- 6.8 In these circumstances, the changes or additional supply of Goods and/or Services shall be deemed to be included in the definition of Goods and/or Services and provided in all other respects to these Conditions.

7. Risk and Ownership/Title

- 7.1 The risk of damage to, or loss of Goods shall pass to the Client from the point when EA-RS advises the time of delivery.
- 7.2 Any property of the Client in EA-RS possession or under its control and all property supplied to EA-RS by or on behalf of the Client is held by EA-RS at the Client's risk.
- 7.3 From the time of delivery until Ownership/Title of the Goods passes to the Client in accordance with this clause 7, the Client shall insure the Goods against all risks for their full value.
- 7.4 Notwithstanding delivery and passing of risk in the Goods, or any other provision of these Conditions, Ownership/Title of the Goods shall not pass to the Client until EA-RS has received (in cash or cleared funds) payment in full of the agreed Contract Price for the Goods (whether or not the Goods are delivered in instalments and have been paid for in part by the Client pursuant to these Conditions) including all other amounts owed by the Client to EA-RS under the Contract in respect to the Goods.
- 7.5 Until Ownership/Title of the Goods has passed to the Client, the Client will hold the Goods as EA-RS' fiduciary agent and bailee and the Client Shall:-
 - a) Not part with possession of the Goods and keep the Goods free from any charge, lien, or encumbrance.
 - b) Keep the Goods stored separately or in some other way as to ensure that they can be identified as EA-RS property.
 - c) Maintain the delivered Goods in satisfactory condition and keep them insured from the date of delivery for their full replacement value against any loss or damage with a reputable insurance company.
 - d) Not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of EA-RS, but if the Client does so all moneys owing by the Client to EA-RS shall (without limiting any other right or remedy of EA-RS) forthwith become due and payable.
 - e) Notify EA-RS immediately upon the occurrence of any of the termination events set out in clause 15.
- 7.6 Until such time as the Ownership/Title in the Goods passes to the Client, EA-RS may at any time require the Client to deliver up the Goods to EA-RS and, if the Client fails to do so forthwith, EA-RS may enter any premises of the Client where the Goods are stored and repossess the Goods.
- 7.7 EA-RS reserve the right to repossess and resell any of the Goods to which it has retained Ownership/Title. EA-RS consent to the Client's possession of the Goods and any right the Client may have regarding possession of the Goods shall in any event cease upon the occurrence of any of the events set out in clause 15.
- 7.8 On termination of a Contract for any reason, EA-RS rights contained in this clause 7 shall remain in effect.

8. Contract Price

- 8.1 The "**Contract Price**" for the supply of Goods and/or Services shall be the price to be paid as set out in the Contract and as amended in accordance with clause 6, that the Client is to pay EA-RS in consideration for the Goods and/or Services.

- 8.2 At any time prior to the Contract, for the supply of Goods and/or Services, the Contract Price may be revised to take account of inflation, increases in costs including costs of any goods, materials, carriage, labour or overheads and the increase or imposition of any tax, duty or other levy, or other charge.
- 8.3 Unless otherwise specified, VAT and any other tax, duty or levy shall be payable by the Client in addition to the Price.

9. Terms of Payment

- 9.1 EA-RS shall be entitled to invoice the Client for all amounts due under the Contract on or at any time after the supply of Goods and/or Services have been provided or at such intervals as set out in the Contract.
- 9.2 All payments shall be made to EA-RS in Pounds Sterling, unless advised otherwise in the Contract.
- 9.3 Payment of the Contract Price for the supply of Goods and/or Services including all adjustments as agreed under clause 6, shall be made within twenty (20) Business Days of the invoice date raised by EA-RS, or as otherwise set out in the Contract. Time of payment is of the essence of a Contract.
- 9.4 EA-RS reserve the right to amend this clause 9 and any amended terms will be identified in the initial Contract Documents and will be subject to agreement within the Contract
- 9.5 No payment shall be deemed to have been received until EA-RS has received cleared funds at their Bank.
- 9.6 The Client shall make all payments due under a Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order, requiring an amount equal to such deduction to be paid by EA-RS to the Client.
- 9.7 EA-RS shall be entitled to offset any amount owing to it from the Client against any amount owed to the Client by EA-RS, under any Contract.
- 9.8 Upon Termination, all payments payable to EA-RS under a Contract shall become due immediately, notwithstanding any other provision.
- 9.9 Notwithstanding the provisions of clause 7, in the event that the Client fails to pay any amount due to EA-RS under the Contract by the due date for payment, EA-RS reserve the right to:
- Suspend supply of Goods and/or Services to the Client.
 - Claim interest at the rate of four percent (4%) above the base lending rate from time to time of The Bank of England accruing on a daily basis to run from the due date for payment until EA-RS has received (in cash or cleared funds) payment in the full amount (including any accrued interest) whether before or after any judgment.
- 9.10 If, in the opinion of EA-RS, the credit-status of the Client deteriorates before the commencement of the supply of Goods and/or Services have been delivered, or during the period of the Contract, EA-RS may require full or partial payment of the Contract Price prior to delivery of the Goods or commencement of the Services or the provision of security for payment by the Client in a form acceptable to EA-RS.

10. Cancellation, Delays and Returns

- 10.1 Upon EA-RS issuing the Order Acknowledgement, the Client's Order has been accepted in accordance with clause 2.10. The Client may only seek to cancel, delay or reschedule the Contract, at the total discretion of EA-RS. This will be subject to payment by the Client of all Goods and/or Services undertaken as at the point of cancellation, together with all reasonable administration costs incurred by EA-RS as a result of the cancellation, delays and returns. Furthermore, the Client will indemnify EA-RS from and against all losses, costs, damages, expenses arising out of such cancellation, delay or rescheduling.
- 10.2 Any Goods return request must be made within five (5) Business days of the EA-RS invoice date and will be accepted at EA-RS discretion (except in respect of any defective Goods, which shall be treated in accordance with clause 12). If a request is accepted by EA-RS in accordance with this clause 10.2, the Goods must be returned within five (5) Business Days of the authority to return.
- 10.3 All Goods must be returned in their original undamaged packaging with the returns number clearly displayed. The Goods returned must be in good condition and together with all parts and instruction manuals or other documentation pertaining to such Goods being returned. All returns will be subject to a 20% re-stocking charge.
- 10.4 Failure to comply with clauses 10.2 and 10.3 will result in the Goods being rejected by EA-RS and the Client will be duty bound to accept them back and EA-RS will not be liable for any refund payments.

11. Insurances

- 11.1 Unless stated otherwise in the Contract, the Client shall take out and maintain an all risks insurance policy to cover for any loss and or damage to the Works (and any unfixed materials and goods delivered to the Site), and such insurance shall also cover loss and or damage caused by Force Majeure Events.
- 11.2 EA-RS shall maintain from reputable insurance brokers policies for public liability, employers liability and Professional Indemnity insurance covers as part of its day to day working operations.

12. Warranties and Liability

- 12.1 Subject to the other provisions of this clause 12, EA-RS warrants that:
- The Goods will correspond with the Contract, be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) at time of delivery, be fit for the purpose which they are normally used, be free from material defects in design or manufacture.
 - The Services will be provided using reasonable care and skill and as far as is reasonably possible, in accordance with the Contract.
 - The Goods and/or Services shall remain so for a period of 12 months ("**Warranty Period**").
- 12.2 EA-RS shall not be liable for the warranty set out in clause 12.1 above, in any of the following events:

- a) Any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Client.
 - b) Any defect in the Goods which was not reported to EA-RS in accordance with clause 3.7.
 - c) The Client makes any further use of such Goods after giving notice in accordance with clause 3.7.
 - d) Any defect arising from damage caused after delivery of the Goods.
 - e) The supply of Goods and/or Services differ from the Contract due to changes made to ensure they comply with applicable statutory or regulatory requirements.
 - f) Any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal conditions, failure to follow EA-RS instructions (whether oral or in writing), as to storage, installation, commissioning use or maintenance.
 - g) Any defect arising from misuse or alteration of the Goods without EA-RS approval, or any other act or omission on the part of the Client, their employees, agents consultants, subcontractors or any third party.
 - h) Where the total Contract Price for the supply of Goods and/or Services has not been paid in full by the Client.
 - i) A Force Majeure Event as described in clause 14.
 - j) If delivery is not refused and the Client does not immediately notify EA-RS of any defect in the quality or condition of the Goods and/or Services or their failure to correspond with the Contract, the Client shall not be entitled to reject the Goods and/or Services and EA-RS shall have no liability for such defect or failure, and

the Client shall be bound to pay the price as if the Goods and/or the Service had been provided in accordance with the Contract
- 12.3 No Goods may be returned to EA-RS without the prior agreement in writing of EA-RS.
- 12.4 Where a valid claim in respect to the supply of Goods and/or Services which is based on a defect in the quality or condition of the Goods and/or Services or their failure to meet the Contract is notified to EA-RS in accordance with these Terms and Conditions, then EA-RS may at its sole discretion:
- a) Replace the Goods (or the part in question) or undertake such reasonable additional works to rectify such defects free of charge.
 - b) Refund or credit to the Client the price for the supply of Goods and/or the Service (or a proportionate part of the Contract Price); in which case the EA-RS shall have no further liability to the Client.
- 12.5 The Client shall ensure that, any use or sale of the Goods by the Client is in compliance with all applicable laws and other regulatory requirements and that the storage and handling of the Goods by the Client is carried out in accordance with directions given by EA-RS or any competent governmental or regulatory authority. The Client will indemnify EA-RS against any liability, loss or damage which EA-RS might suffer as a result of the Client's failure to comply with this clause 12.5.
- 12.6 Notwithstanding any provision of these Conditions, EA-RS does not exclude or limit its liability for:
- a) Death or personal injury caused by its negligence or that of any of its officers, employees, sub-contractors, consultants or other third parties.
 - b) Fraud or fraudulent misrepresentation.
 - c) Any other liability to the extent that the same may not be excluded or limited as a matter of law.
- 12.7 Except as expressly provided in these Conditions and subject to clause 12.6, EA-RS shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any loss, damage, catastrophic failures, cost or expense of any nature whatsoever arising out of or sustained by the Client in relation to any Contract, consisting of:
- a) Loss of profit, anticipated loss of profit, loss of revenue, loss of opportunity, loss of business (partial or full) or market share, loss of goodwill or reputation, wasted expenditure, loss of management time or loss of data (whether direct or indirect in each case) howsoever caused.
 - b) Any special, indirect, incidental or consequential damages, whether or not the possibility of such loss or damage could have been reasonably foreseen and whether or not actually contemplated by the parties.
- 12.8 Except as expressly provided in these Conditions and subject to clause 12.6, EA-RS total aggregate liability to the Client arising under or as a result of any Contract, for negligence, breach of contract, breach of statutory duty, misrepresentation, restitution or otherwise shall in no circumstance exceed the cost of the defective, damaged, undelivered or unperformed Goods and/or Services which give rise to such liability as determined by the Contract Price invoiced to the Client in respect of any occurrence or series of occurrences to be provided under the relevant Contract.
- 12.9 Except as expressly provided in these Conditions and subject to clause 12.6, EA-RS have the express right to offer a capped/limited liability in respect to the supply of Goods and/or Services. Any capped provision will be identified and agreed between the parties carried forward into the Contract.
- 12.10 Subject as otherwise expressly provided in these Conditions all warranties, representations, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, performance or fitness or suitability for purpose, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 and sections 13 to 15 of the Sale of Goods Act 1979) in respect of the goods and/or Services to be provided by EA-RS are excluded to the fullest extent permitted by law.

13. Assignment

- 13.1 A person, firm or party who is not a party to the Contract shall not have any rights to enforce its terms. These Conditions are intended to benefit only the parties hereto and their respective successors and permitted assigns and no provision of these Conditions shall be enforceable by any person or entity other than the parties to these Conditions.

13.2 The Client shall not, without prior written consent of EA-RS, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

13.3 EA-RS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

14. Force Majeure

14.1 EA-RS (or any Third Parties) shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any prevention, hinderance or delay in delivery, or in performing, or any failure to perform its obligations in relation to the supply of Goods and/or Services, if the prevention, hinderance, delay or failure was due to a Force Majeure Event.

14.2 For the purpose of these Conditions, Force Majeure Events include but are not limited to:

- a) An act of God, explosion, flood, earthquake, storm, tempest, fire or accident.
- b) War or threat of war, sabotage, insurrection, terrorism, riots, malicious damage, civil disturbance or requisition
- c) Acts, restrictions, regulations, byelaws, prohibitions or the exercise of emergency power measures of any kind on the part of any local, regional or national governmental/parliamentary authority.
- d) Import or export regulations or embargoes.
- e) Pandemics.
- f) Strikes, lockouts, blockades, embargoes or other industrial actions or trade disputes.
- g) Difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- h) Failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet

14.3 Under a Force Majeure Event, EA-RS will be entitled to suspend the supply of Goods and/or Services while the Force Majeure Event continues.

14.4 If the Force Majeure Event prevents EA-RS from performing the supply of Goods and/or Services for more than sixty (60) Business Days, then EA-RS shall, without limiting its other rights or remedies, have the right to terminate the

Contract immediately by giving written notice to the Client and will not be liable for any loss or damage suffered by the Client as a result the Client as a result.

15. Termination

15.1 EA-RS and the Client shall be entitled to terminate a Contract immediately by written notice to the other party on the basis that other party:

- a) Is unable to pay its debts or becomes insolvent.
- b) Is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction).
- c) Has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets.
- d) Enters into or proposes any composition or arrangement with its creditors generally.

15.2 The Client may Terminate a Contract only:-

- a) In accordance with clause 15.1.
- b) With a written notice to EA-RS, if EA-RS is in material breach of this Contract and either such breach is not capable of remedy or, if the breach is capable of remedy, EA-RS has failed to remedy the breach within twenty (20) Business Days of receiving written notice requiring it to do so.

15.3 EA-RS may terminate a Contract immediately by written notice to the Client:-

- a) If the Client is in material breach of an obligation under a Contract (which shall include a single event or a series of persistent minor events which together have a material adverse impact on the supply of Goods and/or Services or the rights and benefits of EA-RS under this Contract) and either such breach is not capable of remedy or, if the breach is capable of remedy but the Client has failed to remedy the breach within twenty (20) Business Days of receiving written notice requiring it to do so.
- b) At any time before the commencement of the supply of Goods and/or Services.
- c) In accordance with the provisions of clauses 3.9, 14.4 and 21.2.
- d) For convenience, at any time by giving the Client not less than twenty (20) Business Days notice.
- e) If the Client has failed to pay by the due date any sum due and payable to EA-RS under a Contract and such non-payment continues unremedied at the expiry of a period of ten (10) Business days following notification by EA-RS of such non-payment by the Client.

15.4 EA-RS may, without prejudice to its other rights and remedies at law or under this Contract, terminate this Contract for convenience at any time by giving the Client twenty (20) Business Days prior written notice of such termination.

16. Consequences of Termination

16.1 Upon the termination of this Contract for any reason:

- a) The Client shall pay to EA-RS all sums due to EA-RS under this Contract immediately after the date of termination. This includes all EA-RS outstanding unpaid invoices, including any interest. In Respect to Goods and/or Services supplied but for which no invoices have yet been submitted, EA-RS shall submit an invoice, which shall be payable by the Client immediately on receipt.

- b) EA-RS and the Client shall within five (5) Business Days from receipt of a request by the other party return to the other party all original and copy documentation containing Confidential Information of the other party.
- 16.2 Termination of a Contract shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect any continuing obligations of the parties under a Contract.

17. Confidentiality

- 17.1 Each party (the **“Receiving Party”**) shall treat any Confidential Information relating to the other party (the **“Disclosing Party”**) as strictly confidential except to the extent that such Confidential Information can be proved to be within the public domain at the time of disclosure other than as a result of any breach of these Conditions. The Receiving Party shall not disclose such Confidential Information to any third party nor use it for any purpose except as is strictly necessary for the performance of its obligations under the Contract. For the purpose of these Conditions, Confidential Information means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Disclosing Party to the Receiving Party or otherwise acquired by the Receiving Party in connection with these Conditions or its subject matter whether before or after the commencement of the Contract including information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property Rights, market opportunities, business affairs, financial information and other confidential information.

18. Intellectual Property Rights

- 18.1 The supply of Goods and/or Services to the Client shall not confer any right or licence upon the Client to use any logo, trade mark, patent, design, documents, process or products or other intellectual property owned or used by EA-RS, subsisting in or relating to the Goods and/or Services and the Client may only make use of such intellectual property as is permitted in any written agreement between EA-RS and the Client for the time being in force.
- 18.2 All Intellectual Property Rights in or arising out of or in connection with the supply of Goods and/or Services shall be owned by EA-RS. The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on EA-RS obtaining a written licence from the relevant licensor on such terms as will entitle EA-RS to license such rights to the Client.

19. GDPR

- 19.1 The terms **“Personal Data”** and **“Data Subject”** have the meanings given to them in the GDPR.
- 19.2 Any personal information that EA-RS may use will be collected, processed and held in accordance with the UK Data Protection Legislation/GDPR and the Client's rights under it.
- 19.3 EA-RS shall process any Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purposes other than the Contract or as expressly authorised by the Client from time to time.
- 19.4 EA-RS shall take reasonable steps to ensure the reliability of all its employees, sub-contractors, consultants or other third parties who have access to the Personal Data.
- 19.5 EA-RS may authorise a third party subcontractor to process the Personal Data, provided that the subcontractor's contract:
- a) Is on terms which are substantially the same as those set out in these Terms and Conditions.
 - b) Terminates automatically on termination of the Contract for any reason
- 19.6 The Client acknowledges that EA-RS is solely reliant on the Client for direction as to the extent to which EA-RS is entitled to use and process the Personal Data. Consequently, EA-RS will not be liable for any claim brought by a Data Subject arising from any action or omission by EA-RS to the extent that such action or omission resulted directly from the Client's instructions.

20. Anti-Bribery

- 20.1 For the purposes of this clause 20, the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 20.2 EA-RS shall comply with all applicable Bribery Laws and the Anti-Bribery Policies including ensuring that it has in place adequate procedures to prevent bribery and ensure that all others associated with EA-RS, including all employees, sub-contractors, consultants or other third parties, involved in the supply of Goods and/or Services comply.
- 20.3 Without limitation to clause 20.2, EA-RS shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 20.4 EA-RS shall immediately notify the Client as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 20.

21. Modern Slavery Compliance

- 21.1 EA-RS represents, warrants and undertakes that:
- a) Neither it nor any of its employees, sub-contractors, consultants or other third parties has:
 - (i) Been convicted of any offence involving slavery or human trafficking.

- (ii) 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 or human trafficking.
- b) In performing its obligations under the Contract, EA-RS shall ensure that each of its sub-contractors, consultants or other third parties shall comply with all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- c) It will carry out due diligence procedures for its own subcontractors, consultants or other third parties in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

21.2 Notwithstanding any other provision of this Contract, if EA-RS becomes aware of what it determines in good faith to be a breach of the above representations and warranties, EA-RS is entitled to terminate this Contract, and any other agreement between the Client, with immediate effect. In the event of such termination, EA-RS shall have no liability to the Client under this Contract for any fees, reimbursements or other compensation or for any other loss, cost, claim or damage resulting, directly or indirectly, from such termination.

22. Drugs & Alcohol

22.1 EA-RS will ensure strict adherence to all Clients Drug & Alcohol policies with regard to its employees, sub-contractors, consultants or other third parties undertaking services for the Client

23. General

- 23.1 EA-RS may at its discretion sub-contract any of its obligations under a Contract to any member of its Group without the need to consult with or obtain approval from the Client. EA-RS warrants that it has the authority to enter into the Contract for the benefit of itself and on behalf of its Group. Each of the terms, conditions and warranties for the benefit of EA-RS contained in these Conditions shall benefit each such Group member and shall be enforceable by them. The limitations and exclusions of liability contained in these Conditions shall apply to any claims brought by or on behalf of EA-RS and/or any Group member and the involvement of one or more Group members shall not give rise to any increase in or multiplication of any limitation placed upon EA-RS liability.
- 23.2 In the event that the Client has incorporated their own terms and conditions into the contract, the Client's terms and conditions shall have no effect and shall always be superseded and overridden by the Terms and Conditions of the Contract.
- 23.3 Either the Client or EA-RS may, at any time, refer any dispute or difference arising under the Contract to Adjudication in accordance with Part I of the Scheme for Construction Contracts (England and Wales) Regulation 1998 (Amendment) (England) Regulation 2011 or any subsequent amendment thereto.
- 23.4 Where the supply of Goods and/or Services under a Contract comprises the supply of Software, EA-RS will procure the grant of a licence of such Software to the Client from the Third Party Supplier (or its licensor) to use such Software ("**End User Licence Agreement**" or "**EULA**"), subject to the terms and conditions of the EULA as provided by the Third Party Supplier. EA-RS will either provide a copy of the EULA to the Client or the Client will be asked to accept the EULA when they install the Software.
- 23.5 EA-RS represents, warrants and undertakes that it does not specify for use, cause or knowingly permit any Deleterious Materials to be used in their design, manufacture and installation of their Goods.

24. Severability

24.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and the validity and enforceability of all the other provisions of the Contract shall not be affected.

25. Waiver

- 25.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 25.2 Each right or remedy of EA-RS under a Contract is without prejudice to any other right or remedy of EA-RS whether under the Contract or not.

26. Governing Law and Jurisdiction

- 26.1 A Contract shall be governed by and interpreted in accordance with laws of England and Wales.
- 26.2 The courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and to settle any disputes, which may arise out of or in connection with a Contract.