

## 1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms used in the Contract have the meanings specified where used or in this Condition 1.1:

- 1.1.1 **“Affiliate”** means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such other Person at any given time.
- 1.1.2 **“Applicable Law”** means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise;
- 1.1.3 **“Business Day”** means a day other than a Saturday, Sunday or public or bank holiday in Delaware;
- 1.1.4 **“Charges”** means the charges payable by the Customer for the Goods and/or Services as set out in the Order;
- 1.1.5 **“Company”** means ChargePoint Technology Inc., a Delaware corporation, with offices at 120 North Main Street, Suite 11, Forked River, NJ 08731, United States;
- 1.1.6 **“Company Catalogues”** has the meaning given to it in Condition **14.1**;
- 1.1.7 **“Company Materials”** has the meaning given to it in Condition **9.1.9**;
- 1.1.8 **“Contract”** has the meaning given to it in Condition **3.2**;
- 1.1.9 **“Control”** (including its correlative meanings “controlling”, “controlled by” and “under common control with”) means, in relation to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.
- 1.1.10 **“Customer”** means the Person specified in an Order as the customer;

- 1.1.11 **“Customer Default”** has the meaning given to it in Condition **9.3**;
- 1.1.12 **“Data Protection Laws”** means Applicable Laws pertaining to data security, confidentiality, privacy, and/or data breach notification;
- 1.1.13 **“Deliverables”** means any deliverables provided to the Customer in connection with the Company’s performance of the Services as further specified in the Order;
- 1.1.14 **“Expenses”** has the meaning given to it in Condition **19.2.5**;
- 1.1.15 **“Export Laws”** mean Applicable Laws relating to the import, export, re-export, transfer of information, data, goods, and technology, including the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations (22 C.F.R. §120, et seq.) (**“ITAR”**) administered by the U.S. Department of State;
- 1.1.16 **“Force Majeure Event”** has the meaning given to it in Condition **25.1**;
- 1.1.17 **“Goods”** means any product ordered by the Customer from the Company or to be supplied by the Company to the Customer as further detailed in the Order;
- 1.1.18 **“Governmental Authority”** means any transnational, domestic or foreign federal, state or local, governmental authority, department, court, agency or official, including any political subdivision thereof.
- 1.1.19 **“Insolvent”** means a Party (a) terminates or suspends all or a substantial portion of its business activities, (b) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors or becomes subject to direct control of a trustee, receiver or similar authority, or (c) becomes subject to any bankruptcy or insolvency proceeding under federal, state or foreign statutes which is not rescinded or dismissed within sixty (60) days.
- 1.1.20 **“Intellectual Property Rights”** means any and all: (a) inventions, discoveries and ideas, whether patentable or not in any jurisdiction, patents, applications for patents (including divisions, continuations, continuations in part and renewal applications), and any renewals, extensions or reissues thereof, in any jurisdiction; (b) computer software (including software, data and related documentation); (c) writings or other works, whether or not registered in any jurisdiction, registrations or applications for

registration of copyrights in any jurisdiction, and any renewals or extensions thereof; (d) trademarks, service marks, brand names, certification marks, trade dress, trade names and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification of or renewal of any such registration or application; (e) trade secrets, know-how (including research and development, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings and specifications) and rights in any jurisdiction to limit the use or disclosure thereof; and (f) other similar industrial, proprietary and intellectual property related rights anywhere in the world, and all renewals and extensions of the foregoing, regardless of whether or not such rights have been registered with the appropriate authorities in such jurisdictions in accordance with the relevant legislation.;

- 1.1.21 **“Order”** means the Customer’s purchase order for the supply of Goods and/or Services by the Company;
- 1.1.22 **“Order Acknowledgment”** means the Company’s acceptance of the Order in such form as the Company may specify from time to time;
- 1.1.23 **“Person”** means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority;
- 1.1.24 **“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by OFAC or the U.S. Department of State, or Her Majesty’s Treasury of the United Kingdom;
- 1.1.25 **“Sanctioned Country”** means, at any time, a country or territory which is the subject or target of any Sanctions;
- 1.1.26 **“Sanctioned Person”** means, at any time, any person that is the target of Sanctions, including (a) any person listed in any Sanctions-related list of designated persons maintained by the Office of Foreign Assets Control of the US Department of the Treasury (“**OFAC**”) or the U.S. Department of State, or by Her Majesty’s Treasury of the United Kingdom, (b) any person located, organized or resident in a Sanctioned Country or (c) any person directly or indirectly owned or controlled by any such person or persons described in the foregoing clauses (a) and (b);

- 1.1.27 **“Services”** means the services, ordered by the Customer from the Company or to be supplied by the Company to the Customer as further detailed in the Order; and
- 1.1.28 **“Services Specification”** means the description or specification for the Services provided by the Company to the Customer.

## 1.2 Interpretive Provisions.

- 1.2.1 references to any Conditions are to the conditions or provisions set forth in these Conditions;
- 1.2.2 all headings herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof;
- 1.2.3 unless the context otherwise requires:
  - 1.2.3.1 any singular term in the Contract shall be deemed to include the plural, and any plural term the singular;
  - 1.2.3.2 references to a “Person” include the successors and permitted assigns of that Person;  
  
references to any legislation means such legislation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder;
- 1.2.4 Company and Customer may each individually be referred to as a “Party” and collectively as the “Parties;”
- 1.2.5 Whenever the words “include”, “includes” or “including” are used in the Contract, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import; and
- 1.2.6 “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form.

## 2. CONDITIONS

- 2.1 These Conditions shall form the basis of the contract for the sale of the Goods and/or the supply of the Services by the Company to the Customer. Notwithstanding anything to the contrary in the Customer's standard conditions of purchase, these Conditions are the only terms and conditions on which the Company will supply Goods and Services to the Customer and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. No employee or agent of the Company has power to vary these Conditions verbally, or to make verbal representations or promises about the condition of the Goods and/or Services, their fitness for any purpose or any other matter whatsoever.
- 2.2 Except as provided in Condition **2.3**, these Conditions shall apply in substitution of all previous terms and conditions upon which the Company and the Customer shall have carried on business.
- 2.3 In the event that the Company supplies any software to the Customer installed on or for use in connection with the Goods and / or Services, the use of such software will be subject to a separate license agreement. The Company does not sell the software to the Customer and the Company (and, where applicable, its licensors) remains the owner(s) of the software at all times. By using the software, the Customer agrees to the terms of the applicable license agreement, details of which are available on the Company website (as updated by the Company from time to time).

## 3. ORDER ACCEPTANCE

- 3.1 Unless otherwise expressly stated in writing, all quotations and estimates by the Company are to be treated as an invitation for the Customer to place an Order to purchase Goods and / or Services. The Customer's Order is an offer to purchase, under these Conditions, all of the Goods and / or Services listed therein.
- 3.2 A legally binding contract will only be formed when the Company accepts the Order by issuing an Order Acknowledgment to the Customer (the "**Contract**"). For the avoidance of doubt, the Company is under no obligation to accept the Order.
- 3.3 A confirmed Order may only be cancelled or varied with the Company's written consent. The giving of the Company's written consent shall not in any way prejudice the Company's right to

recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

#### **4. DELIVERY OF GOODS**

- 4.1 Unless otherwise stated, all quotations and Order Acknowledgements issued by the Company are priced on an Ex-Works basis (as such term is interpreted in accordance with the meaning given in the Incoterms 2020 rules).
- 4.2 The Company will use reasonable efforts to fulfil the Customer's delivery requirements for the Goods but shall have no liability for a failure to deliver the Goods on such estimated delivery dates. Any delivery dates are subject to change by the Company, in its sole discretion, by giving the Customer written notice.
- 4.3 Time of delivery shall not be of the essence.
- 4.4 If delivery is delayed by a Force Majeure Event, or any other cause beyond the reasonable control of the Company, a reasonable extension of the time for delivery shall be granted. The Customer will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.
- 4.5 If the Customer fails to take delivery on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch the Company shall be entitled to:
- 4.5.1 store or arrange for storage and insure the Goods until the Customer accepts delivery of them or they are disposed of under Condition **4.5.2** (as applicable) and to take such action as it considers necessary to attempt to re-deliver the Goods to the address specified in the Order;
  - 4.5.2 following written notice to the Customer, treat the Contract as repudiated by the Customer and dispose of the Goods in any way it sees fit, including by sale to another person. If the Company sells any of the Goods under this Condition **4.5.2** at a price which is less than the relevant Charges plus any relevant packaging, insurance, carriage and delivery costs, the Company will be entitled to charge the Customer for the shortfall; and
  - 4.5.3 charge the Customer the reasonable costs and expenses which the Company incurs under Conditions **4.5.1** and **4.5.2**.

## 5. DEFECTIVE GOODS

- 5.1 The Customer shall carry out a thorough inspection of the Goods within five (5) Business Days after their delivery and shall promptly notify the Company in writing before expiration of such inspection period of any defects which a reasonable inspection would have revealed. In the case of latent defects, the Customer shall provide written notice of any such defects within twelve (12) months of the date of delivery of the Goods.
- 5.2 If there is any defect in the Goods, the Customer will: (i) at the Company's option, either return to the Company the relevant Goods or permit the Company or its agent or sub-contractor to inspect them at the Customer's premises; (ii) provide to the Company all information and assistance which the Company requires to investigate the alleged defect; and (iii) not use the relevant Goods after becoming aware of the defect.
- 5.3 Subject to Conditions **5.1**, **5.2** and **5.4**, the Company will repair or replace (at its option) the defective Goods or any defective components in the Goods. **SUCH REPAIR OR REPLACEMENT SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE COMPANY'S ENTIRE LIABILITY IN RESPECT OF ANY CLAIM CUSTOMER HAS UNDER CONDITION 5.1.** The liability of the Company in respect of any defective Goods under this Condition **5** shall be limited to the invoice value of the components replaced or repaired and the Company shall not be liable for any consequential loss or damage howsoever caused. It shall be the duty of the Customer to insure against such consequential loss and to hold the Company harmless.
- 5.4 The Company's obligations under Condition **5.3** shall expire immediately following the expiration of twelve (12) months from the date of delivery of the Goods.
- 5.5 In addition to and without limiting Condition **17**, the Company will not have any liability or obligations under Condition **5.3** if:
- 5.5.1 notice of the breach was not timely provided to the Company in accordance with Condition **5.1**;
  - 5.5.2 the Customer fails to comply with any of its obligations set forth in Condition 5.2 in respect of the breach;
  - 5.5.3 the Customer had actual or constructive knowledge of the breach before the execution of the Contract; or

- 5.5.4 the period under Condition 5.4 has expired.
- 5.6 The Company's obligations under Condition 5.1 shall not apply to consumable items including gaskets, seats, seals, filters.
- 5.7 The Company shall not be responsible for or have any liability for any defect in the Goods arising as a result of or in connection with any drawing, design or specification supplied by the Customer.
- 5.8 The Company shall not be responsible for or have any liability in respect of any defect in the Goods:
  - 5.8.1 caused by accident, disaster, or a Force Majeure Event or any causes external to the Goods (including, but not limited to, power failure or electrical power surges);
  - 5.8.2 caused by damage in transit following delivery;
  - 5.8.3 attributable to normal wear and tear;
  - 5.8.4 attributable to the misuse, fault, or negligent or intentional acts or omissions of Customer or any of its agents, employees or contractors;
  - 5.8.5 attributable to the Customer's failure to follow the Company's instructions (whether oral or in writing) or any use of the Goods in a manner for which they were not authorized or designed;
  - 5.8.6 contained in, or caused by, any product or service not supplied by the Company regardless of whether such products or services were used in conjunction with the Goods are supplied by the Company; or
  - 5.8.7 resulting from unauthorized or improper handling, alteration, installation, repair, maintenance or storage.
- 5.9 The Company shall not be responsible and shall have no liability under the warranty in Condition 5.4 above (or otherwise) if the total Charges for the relevant Goods have not been paid by the due date for payment.



## **6. GOODS LOST / DAMAGED IN TRANSIT / OR SHORT DELIVERED**

- 6.1 Where the Company is responsible for delivery of the Goods (interpreted in accordance with the meaning given in Incoterms 2020 Rules), the Customer shall note any claim for short delivery and/or for damage to Goods which have been delivered to the Customer at the time of delivery and shall confirm such claims in a sufficiently detailed writing to the Company's head-office within three (3) Business Days from the date of delivery. If short delivery does take place, the Customer undertakes not to reject the Goods but to accept the Goods delivered as a part performance of the Contract. Where the Customer is responsible for delivery of the Goods (interpreted in accordance with the meaning given in Incoterms 2020 Rules), the Company accepts no responsibility for short delivery and/or for damage to Goods incurred following collection of the Goods from the Company's premises.
- 6.2 The Company will only replace the Goods lost or damaged in transit if the Customer has acted in accordance with Condition **6.1**.

## **7. RETURN OF GOODS FOR CREDIT**

- 7.1 The Company will not accept Goods returned for credit unless previously agreed in writing by the Company, and provided that the Customer has provided full details of the Goods and a copy of the invoice to which they relate.
- 7.2 The Company reserves the right to refuse to accept any returned Goods which are not in their original condition and packaging.
- 7.3 If Goods are returned for credit without any prior agreement in writing with the Company as provided for in Condition **7.1**, the Company will not be obligated to accept the Goods, and the Customer will be liable for any damage caused to the Goods or loss suffered while the Goods are in the possession of the Company.

## **8. SUPPLY OF SERVICES**

- 8.1 The Company shall supply the Services to the Customer in accordance with the Services Specification in all material respects.
- 8.2 The Company shall use reasonable efforts to meet any performance dates for the Services agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. Without limiting the foregoing, Company shall not be liable

for the failure to meet any performance date attributable to any delay caused by the Customer or a Force Majeure Event.

- 8.3 The Company reserves the right to amend the Services Specification to comply with any Applicable Law or regulatory requirement, or if the amendment will not materially degrade the nature or quality of the Services, and the Company shall notify the Customer if any such change is made to the Services Specification under this Condition **8.3**.
- 8.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

## **9. CUSTOMER'S OBLIGATIONS**

9.1 The Customer shall:

- 9.1.1 ensure that the terms of the Order to purchase Goods and/or Services, and any information it provides in the Services Specification, are complete and accurate;
- 9.1.2 cooperate with the Company in all matters relating to the Goods and/or Services;
- 9.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to deliver the Goods and/or provide the Services and to otherwise perform its obligations or exercise its rights under the Contract;
- 9.1.4 provide the Company with such information and materials as the Company may reasonably require in order to provide the Goods and/or supply the Services, and ensure that such information is complete and accurate in all material respects;
- 9.1.5 prepare the Customer's premises for the supply of the Services, including ensuring that any equipment upon which the Services are to be performed is clean, fully operational and compatible with the Services;
- 9.1.6 obtain and maintain all necessary licenses, permissions and consents which may be required for the Customer to receive and use the Services before the date on which the Services are to start;

- 9.1.7 comply with all Applicable Law, including health and safety laws in respect of use of the Goods and/or Services;
  - 9.1.8 promptly give written notice to the Company of any dispute it is involved in and any claim or complaint made against it in respect of Goods and/or Services;
  - 9.1.9 keep all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, insure and maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
  - 9.1.10 comply with any additional obligations as set out in the Order and Services Specification.
- 9.2 The Customer will comply with the Company's instructions and provide such cooperation and assistance as the Company may request in connection with:
- 9.2.1 any product recall initiated by or involving the Company relating to Goods;
  - 9.2.2 any other corrective action initiated by or involving the Company to address actual or potential defects, safety or compliance issues relating to Goods; or
  - 9.2.3 any notification to and/or investigation by a regulatory authority concerning actual or potential defects, safety or compliance issues relating to Goods.
- 9.3 If the Company's performance of any of its obligations under the Contract is hindered, prevented or delayed by:
- 9.3.1 any act or omission by the Customer;
  - 9.3.2 failure by the Customer to perform any relevant obligation;
  - 9.3.3 the Company relying on any incomplete or inaccurate data provided by a third party; or
  - 9.3.4 the Company complying with any instruction or request by the Customer or one of its employees

(each a “**Customer Default**”):

- 9.3.5 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- 9.3.6 the Company shall not be in breach of the Contract and/or liable for any damages, costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Condition 9; and
- 9.3.7 the Customer shall reimburse the Company on written demand for any loss, damage, costs or expenses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## **10. CONFIDENTIAL INFORMATION**

- 10.1 For the purposes of this Condition 10, “**Confidential Information**” means all information of a confidential or proprietary nature disclosed by the Company (or its representatives) to the Customer or (or its representatives) pursuant to or in connection with the Contract that the Company designates as confidential or proprietary or which, under the circumstances surrounding such disclosure or considering the nature of the information, the Customer should recognize that such information should be treated as confidential or proprietary. Confidential Information includes all trade secrets (as defined under Applicable Law) of the Company or its Affiliates, as well as the existence of the Contract and the terms thereof. Confidential Information does not include information that is (a) published or otherwise made available to the public other than by a breach of any agreement by the Customer; or (b) evidenced to be rightfully received by the Customer from a third party without any obligation to maintain the confidentiality thereof.
- 10.2 The Customer shall (a) use the Confidential Information only in accordance with the exercise of rights, or the performance of obligations, under the Contract and not for any other purpose; (b) except as expressly permitted under the Contract, not disclose such Confidential Information to any third party; (c) except as expressly permitted under the Contract, restrict disclosure of such Confidential Information to only those of its representatives who must be directly involved with

such Confidential Information for the purposes of the Contract and who are bound by written confidentiality terms (or professional obligations of confidentiality) substantially similar to and no less restrictive than those in the Contract; (d) not reverse engineer, de-compile or disassemble such Confidential Information; (e) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of such Confidential Information; and (f) promptly notify the Company upon discovery of any unauthorized use or disclosure of such Confidential Information and take reasonable steps to regain possession of such Confidential Information and prevent further unauthorized actions or other breach of the Contract. Notwithstanding the foregoing, the Customer may disclose Confidential Information to the extent required by Applicable Law; provided that, to the extent permitted by Applicable Law, the Customer promptly upon notice of such required disclosure promptly notifies the Company of such required disclosure in order to give the Company the opportunity to seek any other legal remedies to maintain such Confidential Information in confidence.

- 10.3 The Customer shall immediately return all of the Company's Confidential Information disclosed in tangible form (including any and all copies) to the Company upon or expiration termination of the Contract in accordance with Condition **23.4.2**, or at any time prior to termination or expiration upon the Company's request.
- 10.4 The Customer acknowledges and agrees that a breach of its confidentiality obligations under this Contract would cause the Company irreparable damage for which recovery of money damages would be inadequate, and that the Company shall therefore be entitled to seek timely injunctive relief to protect the Company's rights in addition to any and all remedies available at law.

## **11. COST VARIATION**

All quotations and estimates issued by the Company are, unless otherwise stated, based on current cost of production including (but not limited to) materials, hours and wages and are subject to amendment by the Company at any time during the term of the Contract to meet any recognized increase in such cost or any additional costs which arise as a consequence of: (i) any change in law; (ii) any variation in the Customer's requirements for the Goods and/or Services; (iii) any information provided by the Customer being inaccurate; or (iv) incomplete or any failure or delay by the Customer in providing information.

## **12. TAXES OR LEVIES**

- 12.1 All Charges or other amounts set forth in any Order are exclusive of all taxes. The Customer will be responsible for paying all sales, service, value-added, use, excise, consumption taxes, and any other similar taxes, duties and charges of any kind imposed by a Governmental Authority on any amounts payable by Customer in respect of the Goods and/or Services. To the extent the Company is required to pay any such sales, service, value-added, use, excise, or consumption taxes or any other similar taxes, duties or charges, Customer shall reimburse the Company in connection with its payment of Charges. For the avoidance of doubt, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, the Company's income, revenues, gross receipts, personnel, or real or personal property or other assets.
- 12.2 Without limiting Condition **12.1**, the Customer will be the importer of record for the purposes of and shall be responsible for and pay all customs and import duties, taxes, charges, fees, imposts and tariffs where relevant in consequence of the importation of such Goods and for all associated documentation.

## **13. DESIGN**

- 13.1 It is the Customer's responsibility to ensure that all necessary approvals (including those required by Applicable Law) for the Goods have been granted before manufacture of the Goods commences. The Company will assist in supplying design work and calculations for the Goods when requested to do so, provided that no design work or calculations will be issued prior to the placing of an Order by the Customer and acceptance of such Order in accordance with Condition **3**. An additional charge will be payable by the Customer for any design work or calculations required over and above those normally supplied by the Company in the ordinary course of providing Goods and/or Services (as further set out in the Order).
- 13.2 It is the Customer's responsibility to satisfy itself that the design work, calculations and specifications provided by the Company are correct. No responsibility for inaccuracies, errors or omissions will be accepted by the Company once the Customer has approved details submitted. In any event the Company's responsibility is solely confined to its own manufactured components and does not extend to other products or components or overall structural or architectural considerations.

#### **14. TECHNICAL SPECIFICATIONS, CATALOGUES ETC**

- 14.1 All descriptions, technical specifications, design work drawings, imagery, illustrations given in catalogues or other literature issued by the Company (including any material made available on the Company's website) ("**Company Catalogues**"), while given in good faith, shall not form part of the Contract unless specifically incorporated into the Contract by virtue of an Order and the Company accepts no liability for minor variations.
- 14.2 The Company Catalogues shall remain the sole and exclusive property of the Company and all Intellectual Property Rights in the same remains vested in the Company. The Customer shall not acquire or have any rights to any Intellectual Property Rights in the Company Catalogues.
- 14.3 As between the Parties, the Company owns and shall retain all Intellectual Property Rights in the Goods and Services and all Deliverables, as well as any software, technology and/or application that is licensed, delivered, used or made available by the Company to Customer in connection therewith and any and all improvements, enhancements or modifications to any of the foregoing. Customer acknowledges that the Company does not intend to convey any Intellectual Property Rights in, or associated with, the Goods or the Services or any Deliverables provided under the Contract.

#### **15. CERTAIN DISCLAIMERS**

**EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE GOODS AND SERVICES ARE PROVIDED TO CUSTOMER "AS- IS" AND NEITHER THE COMPANY NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY TO CUSTOMER OR ANY OTHER PERSON WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF SUITABILITY, LEGALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY TYPE OR NATURE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.**

#### **16. DATA PROTECTION**

The Parties will comply with their obligations under the Data Protection Laws to the extent they receive and/or process any personal data under the Contract.

#### **17. LIMITATIONS OF LIABILITY**

- 17.1 IN NO EVENT SHALL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL CHARGES ACTUALLY PAID BY THE CUSTOMER TO THE COMPANY FOR THE GOODS AND/OR SERVICES UNDER THE CONTRACT.
- 17.2 IN NO EVENT SHALL THE COMPANY OR ANY OF ITS AFFILIATES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS, LOST REVENUE, UNREALIZED COST SAVINGS, LOSS OF BUSINESS, OR OTHER FINANCIAL LOSS OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THE CONTRACT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
- 17.3 CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PARTIES ENTERED INTO THE CONTRACT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SET FORTH IN CONDITION 17.1 AND CONDITION 17.2, AND THAT SUCH LIMITATIONS OF LIABILITY REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS) AND FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

## 18. CUSTOMER INDEMNITY

- 18.1 The Customer shall indemnify, defend, and hold harmless the Company and its Affiliates and its and their employees and agents ("**Company Indemnitees**") from and against any and all losses, liabilities, costs (including any legal and professional costs incurred), damages, expenses ("**Losses**") suffered by the Company Indemnitees arising from any third-party claim, suit or action:
- 18.1.1 occurring on or at the Customer's site or any site to which delivery is made or on which services are provided at the request of the Customer;
- 18.1.2 caused or contributed to by the negligence or willful misconduct of the Customer, its employees or other persons for whom the Customer is responsible;



18.1.3 arising out of any breach of the Customer's obligations under the Contract or these Conditions,

in each case, except to the extent such Losses are directly caused by the negligence of the Company Indemnitees

## 19. TERMS OF SALE AND PAYMENT

19.1 Payment for the Goods shall become due within thirty (30) days from the date the Company issues the invoice unless different terms are stated in the Company's Order Acknowledgment.

19.2 Unless the Company and the Customer agree a fixed fee for the Services (as detailed in the Order):

19.2.1 the Charges for the Services shall be on a time and material basis:

19.2.2 the Charges shall be calculated in accordance with the Company's daily fee rates, as set out in the Order;

19.2.3 the Company's daily fee rates for each individual person are calculated on the basis of a seven-and-a-half-hour day between 8.00 am to 4.30 pm worked on Business Days;

19.2.4 unless agreed otherwise between the Parties, the Company shall be entitled to charge an overtime rate of 120% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Condition **19.2.3**; and

19.2.5 the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses (including administration expenses), and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials ("**Expenses**").

19.3 The Company will invoice the Customer for the Charges for the Services in accordance with the terms of the Order. Any Expenses will be invoiced by the Company following the end of the month in which they were incurred by the Company.

- 19.4 All payments will be made in the currency specified in the Order Acknowledgement, in available cleared funds by electronic transfer to the bank account as the Company may designate from time to time. Notwithstanding any purported contrary appropriation by the Customer, the Company will be entitled, by giving written notice to the Customer, to appropriate any payment by the Customer to any invoice issued by the Company.
- 19.5 Time will be of the essence in respect of the due date for payment of invoices under this Condition **19**.
- 19.6 The consideration for Goods or Services provided under the Contract is exclusive of any taxes which are due in relation thereto, which will be payable in addition to that consideration in the manner and at the rate prescribed by law from time to time.
- 19.7 Where payment is not made by the due date and without prejudice to any other rights or remedies which the Company may have arising from non-payments:
- 19.7.1 the Company may charge interest on any overdue amount at the rate of the lesser of (a) then-current prime rate as published in The Wall Street Journal (or if more than one such rate is reported, by the average of such rate) plus two percent (2%), or (b) the highest rate permissible under Applicable Law, calculated on a day to day balance basis until the Company receives payment; and
- 19.7.2 the Company will be entitled to withhold further deliveries of Goods and to suspend provision of the Services and refuse to carry out any other work or supply any other Goods and/or Services to the Customer until all payments due or deemed due to the Company have been paid in full.
- 19.8 Except as otherwise expressly provided in these Conditions or required by Applicable Law, all payments to be made by the Customer to the Company under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counterclaim.
- 19.9 Following expiration or termination of the Contract:
- 19.9.1 the Company will be entitled to invoice all Charges and any Expenses incurred which have not yet been invoiced; and

19.9.2 all invoices (including any invoices issued under Condition **19.9.1**) will become immediately due and payable by the Customer.

## **20. RISK AND TITLE**

20.1 Unless otherwise specified in the Customer's Order or the Company's Order Acknowledgment, risk in the Goods and damage to or loss or accidental deterioration or destruction of the Goods shall pass to the Customer in accordance with Ex-Works (interpreted in accordance with the meaning given in Incoterms 2020 Rules) and the Customer shall insure against such risk.

20.2 Goods supplied by the Company to the Customer shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company all sums due in respect of the Goods and Services supplied with such Goods and all other sums which are or which become due to the Company from the Customer on any account whatsoever.

20.3 Until ownership of the Goods has passed to the Customer under Condition **20.2**:

20.3.1 the Customer shall:

20.3.1.1 hold the Goods as the Company's fiduciary agent and bailee;

20.3.1.2 properly (at the Customer's cost) protect the Goods as the Company's property and store the Goods separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

20.3.1.3 maintain the Goods in satisfactory condition; and

20.3.1.4 keep the Goods insured for their full price against damage or loss on an "all risks" basis with insurers approved by the Company, (acting reasonably), ensure that the Company's interest in them is noted on the relevant insurance policy and that the Company is named as loss payee in respect of the Goods, whenever requested by the Company produce a copy of the policy of insurance in respect of the Goods to the Company, do nothing and not omit to do anything which in consequence permits any insurer to refuse to indemnify the Customer in full in accordance with the terms of any insurance policy maintained

in respect of the Goods in respect of any claim made under any such insurance policy and ensure that any insurance proceeds received by the Customer under the relevant policy are applied to repairing damaged Goods or, in the event that they are not so applied, hold such proceeds on trust for the Company.

- 20.4 Subject to Condition **18**, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business and shall receive as trustee for and account to the Company in respect of any proceeds of sale or otherwise of the Goods including insurance proceeds whether tangible or intangible provided that:
- 20.4.1 the Company may require the Customer to deliver up to the Company any of the Goods which are still in existence and have not been resold and if the Customer fails to do so forthwith the Company, its employees or agents, may enter on the premises of the Customer or any third party where the Goods are stored and repossess the Goods; and
  - 20.4.2 the Company may at any time during normal business hours enter the premises of the Customer to determine the whereabouts of the Goods and the Customer's compliance with the provisions of these Conditions.
- 20.5 If the Customer resells the Goods under Condition **20.4**, legal and beneficial ownership of Goods will pass to the Customer immediately prior to the Customer entering into a binding contract for the sale of those Goods.
- 20.6 The Customer's right to possession, use, consumption and resale of the Goods will terminate immediately if, before ownership of the Goods passes to the Customer in accordance with Conditions **20.2** or **20.5**:
- 20.6.1 the Customer becomes Insolvent;
  - 20.6.2 the Customer fails to pay any sum due to the Company on or before the due date;
  - 20.6.3 the Customer encumbers or in any way charges any of the Goods; or
  - 20.6.4 the Contract expires or terminates for any reason.

20.7 If the Customer's right to possession, use, consumption and resale of the Goods terminates in accordance with Condition **20.6**, the Company will be entitled to issue the Customer with a credit note for all or any part of the price of the Goods together with all applicable taxes.

20.8 The Customer grants (and will procure from the owner of any third party premises a grant) to the Company, its agents, employees and sub-contractors an irrevocable license to at any time enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession, use and resale has terminated, to recover them.

## **21. EXPORT CONTROLS AND SANCTIONS**

21.1 The Customer irrevocably warrants, represents, undertakes and guarantees that:

21.1.1 Customer shall not sell, export, or re-export, directly or indirectly, to any Sanctioned Country listed on <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations> or for use in any Sanctioned Country listed on <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations>;

21.1.2 Customer shall undertake its best efforts to ensure that the purpose of Condition **21.1.1** is not frustrated by any third parties further down the commercial chain, including by possible resellers;

21.1.3 Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Condition **21.1.1**;

21.1.4 any breach of Conditions **21.1.1**, **21.1.2**, or **21.1.3** shall constitute a material breach of the Contract, and the Company shall be entitled to seek appropriate remedies available under this Contract and under Applicable Law (including, but not limited to, termination of the Contract);

21.1.5 Customer shall immediately inform Company about any problems in applying Conditions **21.1.1**, **21.1.2**, or **21.1.3**, including any relevant activities by third parties that could frustrate the purpose of Condition **21.1.1**. Customer shall make available to Company the information concerning compliance with the obligations under Conditions **21.1.1**, **21.1.2**, and **21.1.3** within two (2) weeks of the simple request of such information;

- 21.1.6 where the Company has reason to believe that any Goods have been sold, exported, or re-exported directly any Sanctioned Country listed on <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations>, the Company may notify applicable U.S. governmental entities irrespective of any confidentiality or non-disclosure agreement between the Parties;
  - 21.1.7 it is not a Sanctioned Person;
  - 21.1.8 it has not engaged in any transaction or conduct that could result in it becoming a Sanctioned Person;
  - 21.1.9 it is not engaging in and has not engaged in any transaction that circumvents or has the purpose of circumvention of any Sanctions;
  - 21.1.10 it has not been and is not subject to any claim, proceeding, formal notice or investigation with respect to any Sanction or Export Law;
  - 21.1.11 the transactions contemplated by the Contract will not directly or indirectly involve a Sanctioned Person or any country which is (or whose government is) the subject of any Sanction;
  - 21.1.12 it has provided all information of which it is aware that the Company reasonably requires in order for the Company to assess and manage the risk of Sanctions being imposed on the Company and to enable the Company to comply with all laws or regulations applying in the jurisdictions in which the Goods and/or Services are supplied or delivered, the parties to the Contract are located or in which any element of the Contract is to be performed; and
  - 21.1.13 there are no pending or threatened claims, proceedings, formal notices or investigations against or involving the Customer or any of its group companies in respect of any Export Laws or Licenses.
- 21.2 The Customer will not sell, assign, dispose of or otherwise transfer any of the Goods and/or Services to any Sanctioned Person.
- 21.3 The Customer will at all times during the Contract:
- 21.3.1 comply with any Sanction or Export Law;

- 21.3.2 ensure that it has in place appropriate controls and safeguards to prevent any action being taken by it or by any user of the Goods and/or Services that would amount to or result in a breach of or non-compliance with any Sanction or Export Law; and
- 21.3.3 comply with all Export Laws in relation to the supply of the Goods and the performance of the Services.
- 21.4 If at any time during the Contract:
  - 21.4.1 the Customer becomes or any of its officers, employees, agents or subcontractors becomes a Sanctioned Person or it is aware that it or any of its officers, employees, agents or subcontractors is likely to become a Sanctioned Person;
  - 21.4.2 the Customer becomes subject to any claim, proceeding, formal notice or investigation with respect to any Sanction;
  - 21.4.3 a breach, or suspected breach, of any of the Customer's obligations under Conditions 21.1, **21.2** or **21.3** occurs; or
  - 21.4.4 the Customer becomes aware of a breach of any of the warranties set out in Condition **21.1**,

the Customer will immediately notify the Company in writing of the relevant fact, circumstance or breach in reasonable detail, including the identity of the third-party purchaser, the date of the resale, the quantity of Goods resold and any further details requested by the Company.
- 21.5 In the event that the Customer breaches Conditions **21.1**, **21.2**, **21.3** or **21.4**:
  - 21.5.1 the Company shall be entitled to withhold the supply of any undelivered Goods, under the Contract to which the breach relates or any other contract made between the Company and the Customer, to the Customer; and
  - 21.5.2 the Customer will indemnify the Company Indemnitees against all Losses suffered by the Company Indemnitees as a result of any breach of Conditions **21.1**, **21.2**, **21.3** or **21.4**.
- 21.6 The Parties acknowledge and agree that:

- 21.6.1 if any Sanctions or ban, control or other restriction under Export Law is imposed or introduced after the date of the Contract, irrespective of whether that imposition or introduction is a Force Majeure Event, then the Company will not be liable to the Customer for any loss (whether direct or indirect), damage, costs or expenses arising out of or relating to any delay or failure by the Company to perform any of its obligations under the Contract if such delay or failure is a result of any action taken by the Company which the Company believes in its sole discretion to be necessary or desirable in order to comply with any Sanctions and Export Law;
- 21.6.2 where the Customer has made payment for all or part of the Goods and/or Services under the Contract and the Company is prevented from receiving or accessing (or is otherwise not permitted to receive or access) that payment as a result of the Customer or any of its group companies being or becoming a Sanctioned Person or being in breach of any Sanction or Export Law, that payment is not to be taken to have been validly made by the Customer in accordance with and for the purposes of the Contract and accordingly the Company will be:
  - 21.6.2.1 relieved of its obligations to supply the Goods and/or Services (or any part of them);
  - 21.6.2.2 entitled to exercise any rights of termination (whether arising under the Contract or otherwise); and
  - 21.6.2.3 entitled to recover from the Customer any loss or expense incurred by it or any member of the Company's group as a result of that prevention or inability to receive or access such payment.
- 21.7 Any breach of Conditions **21.1** to **21.5** by the Customer will be a material breach of the Contract which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises and irrespective of the level of any financial loss or deprivation of benefit arising as a consequence of such breach.

## **22. ANTI-BRIBERY AND CORRUPTION**

Both Parties shall comply with all Applicable Law relating to anti-bribery and anti-corruption including but not limited to the United States Foreign Corrupt Practices Act of 1977, as amended from time to time and the United Kingdom's Bribery Act 2010, as amended from



time to time. Each Party shall have in place policies and procedures to ensure compliance with this Condition **22**.

## **23. TERMINATION**

23.1 Either Party may immediately terminate the Contract by giving prior written notice if the other Party:

23.1.1 commits a material breach of the Contract which is incapable of remedy or, in the case of a breach capable of being remedied, has not been remedied within thirty (30) days of receiving notice requiring it to be remedied;

23.1.2 becomes Insolvent. A Party will notify the other Party immediately upon becoming Insolvent.

23.2 The Company may immediately terminate the Contract if:

23.2.1 the Customer fails to make any payments due under the Contract by the due date for payment;

23.2.2 the Customer undergoes a change in Control without the Company's prior written consent;

23.2.3 the Customer is in breach of any of Conditions **21.1** to **21.5**; or

23.2.4 the Customer is in breach of Condition **22**.

23.3 If the Company has the right to terminate the Contract under Conditions **23.1** and/or **23.2**:

23.3.1 the Company may withhold delivery of any undelivered Goods and stop any Goods in transit;

23.3.2 the Company may terminate the Customer's right to re-sell and retain possession of any of the Goods owned by the Company;

23.3.3 the Company may enter the Customer's premises or any other premises where the Goods are or may be stored and may repossess and sell or dispose of any Goods owned by the Company to discharge any sums owed by the Customer to the Company under the Contract or any other agreement with the Customer;

- 23.3.4 the Company may immediately suspend the provision of any Services; and
  - 23.3.5 all monies owed by the Customer to the Company (including all outstanding Charges, any third party costs the Company is required to pay and any work-in-progress costs in respect of any Goods and/or Services) shall immediately become due and payable.
- 23.4 On termination of the Contract:
- 23.4.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices together with all interest on such unpaid sums and, in respect of Services and Goods supplied for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 23.4.2 the Customer shall return all of the Company Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
  - 23.4.3 the Customer shall:
    - 23.4.3.1 cease to use the Company's Confidential Information;
    - 23.4.3.2 if requested to do so, return all of the Company's Confidential Information (including all copies and extracts) in its possession or control; and
    - 23.4.3.3 if requested to do so, destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any of the Company's Confidential Information.
- 23.5 Termination or expiration of the Contract shall not affect any rights, remedies, obligations and liabilities of the Parties that have accrued up to the date of termination or expiration, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiration.

23.6 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiration shall continue in full force and effect.

#### **24. STATUTORY OBLIGATIONS AND CONSENTS**

24.1 The Customer shall be responsible for obtaining and maintaining all necessary consents, approvals, authorizations, waivers, permits and licenses that are required for conducting its business and using the Goods in accordance with all Applicable Law.

24.2 The storage, handling, conveyance and use of products supplied by the Company may be subject to regulatory requirements. Customer shall be responsible for compliance with all such regulatory requirements.

#### **25. FORCE MAJEURE**

25.1 The Company shall not be in breach of the Contract or otherwise liable to the Customer for any failure to perform or delay in performing its obligations under the Contract to the extent that and for so long as such failure or delay is due to: (a) acts of God or natural disasters, including fire, flood, hurricane, inclement weather, winds; (b) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including but not limited to a public health crisis which results in a quarantine, a stay-at-home order, a shelter in place order or other restriction on workers; (c) civil or military action, including a national emergency, riot, civil insurrection, act of terrorism, threat of terrorism, or the taking of property by condemnation or eminent domain; (d) strikes or labor disputes; (e) fuel shortages, energy shortages, power outages, or power reductions, including proactive power reductions or power outages by power companies for safety reason, wildfire prevention, conservation or other similar reason; (f) laws, orders, rules, regulations, directions, or actions of Governmental Authorities having jurisdiction over the Goods or Services; (g) delays in obtaining permits or other approvals from Governmental Authorities for Goods or Services provisioning; or (h) events which make performance inadvisable, commercially impracticable, or impossible, or any other event or circumstance beyond the Company's reasonable control ("**Force Majeure Event**").

25.2 The Company will not be in breach of the Contract or otherwise liable to the Customer for any failure to perform or delay in performing its obligations under the Contract to the extent that this is due to a Force Majeure Event affecting the Customer or the Customer's failure to perform or delay in performing any of its obligations under any Contract.

25.3 The Customer will continue to pay the Company's invoices in accordance with Condition 19 in respect of any Goods and/or Services which the Company continues to supply notwithstanding the occurrence of the Force Majeure Event.

## 26. THIRD-PARTY BENEFICIARIES

Except as expressly set forth herein, no provision of the Contract is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties to the Contract and their respective successors and assigns.

## 27. NOTICES

27.1 **Any notice given under or in connection with the Contract will be in writing** using the communications methods set out below, and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this Condition 27). **All notices shall be delivered by personal delivery, nationally recognized same day or overnight courier (with all fees prepaid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid).**

27.2 Any notice given in accordance with Condition 27.1 will be deemed to have been validly and effectively given: (a) if sent by personal delivery or by courier (all fees prepaid) on the date of receipt; (b) if sent by email, upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment); or if sent by certified or registered mail, return receipt requested, postage prepaid on the third Business Day after the date mailed.

## 28. GENERAL

28.1 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

28.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or

default will only be valid if it is in writing and signed by the Party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

- 28.3 The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither Party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other Party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract. Nothing in this Condition 28.3 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 28.4 The Customer shall not assign, sub-contract, delegate, transfer or dispose of the Contract and/or any of its rights or obligations under it without the prior written consent of the Company.
- 28.5 Any provision of the Contract may be amended, but only if such amendment is in writing and is signed by an authorized representative of both Parties; provided that, for the avoidance of doubt, the foregoing shall not limit the Company's right to unilaterally amend the Services Specification or any quotations and estimates, in each case, to the extent that the Contract expressly provides the Company with a right to do so.
- 28.6 Nothing in the Contract and no action taken by the Parties in connection with it or them will create a partnership or joint venture between the Parties or give either Party authority to act as the agent of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.
- 28.7 Each Party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 28.8 The Company's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.

## **29. GOVERNING LAW AND JURISDICTION**

- 29.1 These Conditions, the Contract and any non-contractual obligations arising out of or in connection with them shall be governed by and construed in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof or any other rules that would result in the application of a different body of law.

29.2 Exclusive jurisdiction over and venue of any suit or action arising out of or relating to the Contract (or any disputes arising out of or relating to the Contract or the subject matter of the Contract) will be in the federal state courts in the State of Delaware. Both Parties irrevocably submit to venue and exclusive jurisdiction in such courts and waives all objections to jurisdiction and venue of such courts. A final judgment in any such suit or action may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.