



General Terms and Conditions of Purchase

The Supplier's particular attention is drawn to clauses 3, 5, 12 – 15 and 21 and the applicable paragraphs of the Schedule(s) (as referred to in the Contents section below) corresponding to the nature of the Supply.

NSG Environmental Limited

Scientia House
Western Avenue
Matrix Park
Chorley
Lancashire
PR7 7NB

Registered company number:
02769182

Tel: 01772 458 818
Fax: 01772 458 819

AMENDMENT RECORD SHEET			
ISSUE NO.	SECTION	DESCRIPTION	DATE
One	All	Issued for use	7 th June 2016
Two	11.1	Payment terms changed from 60 days to nett monthly (30 days from month end)	5 th July 2017
Three	All	All terms and conditions amended	23 rd March 2021
Four	15.1(a)	Update to clarify payment for work in progress on exercise of termination for convenience	2 nd June 2021
Five	6	Strengthening change control mechanism and position surrounding additional charges	21 st January 2022

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Standard Terms and Conditions

1 Definitions and Interpretation

1.1 In these Terms, the following definitions apply:

Agreement: the legally binding contract between NSG and the Supplier for the Supply in accordance with these Terms, the Purchase Order and any Specification.

Applicable Data Protection Laws: means, to the extent that the:

- (a) UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom; and
- (b) EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject,

which in each case relates to the protection of personal data.

Applicable Laws: means any and all applicable laws, statutes, regulations and codes and any other applicable local, international or foreign law or regulation, or those issued by any Governing Bodies including (without limitation) import and export laws, restrictions, national security controls, regulations and anti-corruption legislation from time to time in force in the United Kingdom.

Brexit: the UK ceasing to be a member state of the European Union on 31 January 2020 and ceasing, on 31 December 2020, to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union.

Brexit Notice: has the meaning given in clause 16.2.

Brexit Trigger Event: means any of the following events whenever occurring at any time as a direct or indirect consequence of Brexit:

- (a) an adverse impact on NSG's ability to perform its obligations under this Agreement in accordance with these Terms or any Applicable Law; or
- (b) an increase in the costs incurred by NSG in performing its obligations under this Agreement since the date it was entered into.

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

Claim: has the meaning given in clause 14.3(a).

Change of Control: a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.

Change Order: has the meaning given in clause 6.1.

Charges: the charges payable by NSG to the Supplier for the Supply in accordance with clause 8.

Compliance Legislation: means the Bribery Act 2010, the Criminal Finances Act 2017, the Modern Slavery Act 2015, the Money Laundering Regulations 2017 and such other pieces of Applicable Law relating to corporate criminal offences.

Confidential Information: any confidential information concerning the business, affairs, customer, clients or suppliers of the other party, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, Intellectual Property Rights, market opportunities and customers, whether or not marked as confidential.

Deliverables: any outputs of the Supply and any other documents, products and materials provided by the Supplier to NSG and any other documents, products and materials provided by the Supplier to NSG in relation to the Supply (excluding the Supplier's Equipment), in each case whether developed by the Supplier or on its behalf by any of the Supplier's agents, contractors and employees, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Dispute: has the meaning given in clause 33.1.

Dispute Notice: has the meaning given in clause 33.1(a).

Equipment: the plant, machinery, tooling or machinery (or any part of them) set out in the Purchase Order and subject of the Supply.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Force Majeure Event: means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic or similar event, any law guidance restriction or other action taken by a Government or a public authority including without limitation imposing an export or import restriction quota or prohibition, the collapse of buildings, fire, explosion or accident, or failure of telecommunications utilities or any supplier or subcontractor.

Goods: the goods (or any part of them) set out in the Purchase Order and subject of the Supply.

Governing Bodies: any bodies, associations or organisations having governing or regulatory authority over any element of the Supply or where the same are being delivered or performed and the activities of the parties or those of NSG's customer (or the ultimate beneficiary of the Supply) and which shall include but not be limited to the Environment Agency, the Health and Safety Executive, the Office for Nuclear Regulation and the Nuclear Decommissioning Authority.

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

Losses: means actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements.

NSG: NSG Environmental Limited, a company registered in England and Wales with company number 02769182 whose registered office is at Nis Limited, Ackhurst Road, Chorley, Lancashire PR7 1NH.

NSG Materials: any and all materials supplied by NSG to the Supplier for use in connection with the provision of the Supply including but not limited to any related plans, designs and drawings.

NSG Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of NSG.

NSG's Equipment: any equipment, including tools, systems, cabling or facilities, provided by NSG, its agents, subcontractors or consultants which is used directly or indirectly in the performance of the Supply.

NSG's Premises: Scientia House, Western Avenue, Matrix Park, Chorley, Lancashire PR7 7NB.

Proposal: the Supplier's proposal for the Supply.

Purchase Order: NSG's order for the Supply, as set out in NSG's purchase order form or as otherwise specified in writing.

Questionnaire: NSG's supplier evaluation questionnaire, as submitted to the Supplier by NSG.

Required Standards: means:

- (a) the accreditations, certifications and standards; and
- (b) rules, policies and procedures whether of NSG, its clients, the ultimate beneficiary of the Supply or any applicable third party (which in each case may be updated from time to time),

listed in the Questionnaire or otherwise communicated to the Supplier (and where applicable available on request) from time to time, which subject to clause 5.1, NSG requires the Supplier to comply with, meet and uphold at all times in connection with the Supply.

Restricted Customer: any firm, company or person who is or has been at any time during the immediately preceding 12 months a customer or prospective customer of, or in the habit of dealing with, NSG.

Restricted Person: any firm, company or person employed or engaged by NSG, its customer or the ultimate beneficiary of the Supply during the term of this Agreement, who has been involved in the management of this Agreement (or otherwise involved with the Supply) either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

Restricted Supplier: any firm, company or person who is or has been at any time during the immediately preceding 12 months any supplier of goods or services to NSG.

Services: the general, professional or labour services or works of whatever nature (or any part of them), set out in the Purchase Order and subject of the Supply.

Specification: any specification or scope for the Supply agreed between the parties, including but not limited to any works information or site information documents.

Supplier: the person or corporate entity from whom or which NSG receives the Supply, as detailed in the Purchase Order.

Supplier Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a controller.

Supplier Privacy Policy: has the meaning given in clause 10.4(a).

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to NSG and used directly or indirectly in the Supply.

Supply: the provision by the Supplier and receipt by NSG of:

- (a) the Goods in accordance with Schedule 1;
- (b) the Services in accordance with Schedule 2;
- (c) the Equipment on hire in accordance with Schedule 3,

as detailed in the Purchase Order (as the case may be).

Terms: these terms and conditions as amended from time to time in accordance with clause 32.

Transfer: assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule in which they appear.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires:
- (a) words in the singular shall include the plural and in the plural shall include the singular; and
 - (b) a reference to one gender shall include a reference to the other genders.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to legislation or a legislative provision:
- (a) is a reference to it as amended, extended or re-enacted from time to time; and
 - (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9 A reference to writing or written includes email.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.
- 1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 If there is any conflict or ambiguity between the terms of:
- (a) the Purchase Order;
 - (b) the Schedules to these Terms;
 - (c) these Terms;
 - (d) the Questionnaire; and
 - (e) the Proposal,

a term contained in the document listed higher in the above list shall have priority over one contained in a document lower in the list.

2 Basis of Agreement

- 2.1 In advance of entering into this Agreement, unless otherwise agreed by NSG, the Supplier shall be required to:
- (a) provide NSG with the Proposal; and
 - (b) complete the Questionnaire,
- and in doing so warrants that any and all information included in the same is true, accurate and complete in every respect. Further, the Supplier warrants and represents that it holds all Required Standards and that it has highlighted and meets any other accreditations, certifications and standards not otherwise brought to its attention by NSG.
- 2.2 Where NSG is satisfied as to the contents of the Proposal, the Questionnaire, the Supplier's capabilities and compliance with its internal procurement guidelines and policies, it shall raise its Purchase Order, provided always that in raising the Purchase Order NSG shall not be deemed to have ratified or approved the truth, accuracy or completeness of the Proposal or Questionnaire in any respect.
- 2.3 The Purchase Order shall not be deemed to be NSG's acceptance of the Proposal and constitutes an offer by NSG to receive the Supply from the Supplier in accordance with this Agreement.
- 2.4 The Purchase Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Purchase Order; or
 - (b) any act by the Supplier consistent with fulfilling the Purchase Order,
- at which point and on which date the Agreement shall come into existence.
- 2.5 These Terms apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate at any time including in accordance with this clause 2, or which are implied by trade, custom, practice or course of dealing.

3 The Supplier's General Obligations – Special Attention is Drawn to this Clause

- 3.1 The Supplier shall perform and/or deliver the Supply in accordance with the terms of the applicable Schedule(s).
- 3.2 Notwithstanding that NSG may have prepared the Specification, the Supplier is deemed to have reviewed and accepted the same as being accurate and complete in every respect and takes any and all responsibility for its contents and any inherent inaccuracies or incompleteness.
- 3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits (including those issued by Governing Bodies) that it needs to carry out its obligations under the Agreement in respect of the Supply and to make use of NSG's Equipment and not to do or omit to do anything which may cause it or NSG to lose any licences, permissions, authorisations, consents and permits (including those issued by Governing Bodies) that it or NSG rely on for the purposes of the Supply or conducting their businesses.
- 3.4 The Supplier shall cooperate with NSG in all matters relating to the Agreement, and comply with all reasonable instructions of NSG including complying with any written or verbal instructions in relation to safety and security while on the premises of NSG or any of its customers.
- 3.5 The Supplier shall:
- (a) hold all NSG Materials in safe custody at its own risk and maintain the NSG Materials in good condition until returned to NSG, and not dispose of or use the NSG Materials other than in accordance with NSG's written instructions or authorisations; and

- (b) take good care of any of NSG's Equipment provided by NSG pursuant to this Agreement and agrees and acknowledges that title to NSG's Equipment shall remain with NSG at all times.

3.6 The Supplier shall notify NSG in the event that there is a proposed or actual Change of Control.

4 NSG's General Obligations

NSG shall:

- (a) co-operate with the Supplier in all matters relating to the Supply;
- (b) provide access to such premises, data, documents, information, items, materials and other facilities as may reasonably be requested by the Supplier and agreed with NSG in writing in advance, for the purposes of the Supply; and
- (c) provide NSG's Equipment to the Supplier by the dates specified and in the manner prescribed.

5 Compliance – Special Attention is Drawn to this Clause

5.1 In performing its obligations under the Agreement, the Supplier agrees to and warrants that it shall comply fully, at its own expense, with the Applicable Laws and that unless otherwise agreed between the parties, it has and shall maintain the Required Standards.

5.2 Where and to the extent that the Supply is to be used in, delivered to, performed in or in connection with any country outside of the United Kingdom, reference to Applicable Laws shall be deemed to include those applying to that country.

5.3 The Supplier represents, warrants and undertakes to NSG that:

- (a) in relation to these Terms and the Agreement and/or its subject matter, neither the Supplier nor any of its employees, sub-contractors or agents or others performing services on behalf of the Supplier has, as far as it is aware, done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Supplier or NSG of the Compliance Legislation;
- (b) the Supplier has in place, and will at all times during the term of the Agreement continue to have in place, adequate procedures designed to prevent any person associated with the Supplier from committing an offence under any Compliance Legislation and as a minimum such procedures comply, and will at all times during the term of the Agreement comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the applicable Compliance Legislation;
- (c) the Supplier shall comply with all Compliance Legislation in connection with the Agreement and NSG's business and shall immediately notify NSG if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation;
- (d) the Supplier will promptly co-operate (and will procure that each of its employees, agents, sub-contractors and any others performing services on its behalf in relation to the Agreement and/or its subject matter will co-operate) with NSG and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Compliance Legislation by the Supplier or any of its employees, agents, sub-contractors or others performing services on its behalf; and
- (e) neither the Supplier nor any of its shareholders, subsidiaries or affiliates nor any of its or their directors, officers, agents or employees has been subject to any investigation by any government agency with regard to any breach of the Compliance Legislation.

5.4 The Supplier will throughout the term of the Agreement comply with, monitor and enforce the obligations referred to in clause 5.3 above.

5.5 Where for the purposes of this clause:

- (a) **Counterfeit:** means Fraudulent Goods and/or Deliverables that have been confirmed as:
 - (i) being a copy, imitation or substitute that has been represented, identified or marked as genuine;
 - (ii) being altered by a source without a legal right with the intention to mislead, deceive or defraud; and/or
 - (iii) infringing the Intellectual Property Rights of a third party;
- (b) **Fraudulent:** means Goods and/or Deliverables which have been misrepresented as meeting NSG's requirements, including but not limited to those represented as being new; and
- (c) **Suspect:** means there being any evidence or a reasonable suspicion that Goods and/or Deliverables may be Counterfeit or Fraudulent,

NSG reserves the right to quarantine any Goods and/or Deliverables which are Suspect, Counterfeit or Fraudulent and have the same tested by a third party, the costs of which are to be met by the Supplier in the event that a positive determination is made. Notwithstanding that an invoice may have been validly raised in accordance with the terms of the applicable Schedule, payment of the Charges in this case will be held by NSG until conclusive results are obtained which confirm that the Goods and/or Deliverables in question are not Suspect, Counterfeit or Fraudulent and in cases where payment has already been made the Supplier shall issue a refund to NSG on demand. Furthermore, Goods and/or Deliverables which are Suspect may be subject to disposition and details reported to the appropriate authorities. The disclosure of the source and location of supply is to be provided where requested.

5.6 If the Supplier fails to comply with this clause 5, NSG shall be entitled, in its sole discretion, to terminate the Agreement and any other contracts between the Supplier and NSG without penalty to NSG but with obligations for the Supplier to remedy any damages suffered by NSG as a result of such termination or breach of Agreement.

6 Change Control

6.1 Either party may propose changes to the scope or execution of the Supply, but subject to clause 6.3(b) no proposed changes shall come into effect until a relevant Change Order has been signed by both parties.

6.2 A Change Order shall be a document setting out the proposed changes and the effect those changes will have on:

- (a) the Supply;
- (b) the Charges;
- (c) the timetable for the Supply; and
- (d) any terms of this Agreement.

6.3 If NSG wishes to make a change to the Supply:

- (a) it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Order; and
- (b) the Supplier shall, within 5 Business Days of receiving NSG's request at clause 6.2(a) (or shorter time as is specified by NSG in the event of there being an urgent requirement), provide a draft Change Order to NSG. Where the Supplier fails to provide a draft Change Order within the prescribed timeframe, NSG may issue its instructions for the Supplier to proceed with the proposed Change on the basis set out in clause 6.5(b).

6.4 If the Supplier wishes to make a change to the Supply, it shall provide a draft Change Order to NSG.

6.5 The Supplier agrees that:

- (a) in issuing a draft Change Order, any changes in the Charges shall be calculated in the same manner as those agreed to be paid without the Change; or
- (b) where it fails to issue a draft Change Order as required by clause 6.3(b) such that NSG is required to instruct the Supplier to proceed with the proposed Change, any changes in the Charges shall, unless otherwise agreed in writing between the parties, be assessed by NSG acting reasonably. In doing so NSG shall carry out a fair assessment of the nature and extent of the proposed Change (when considered against the Supply) and calculating the additional Charges in the same manner as those agreed to be paid without the Change.

For the purposes of clauses 6.5(a) – (b), any additional Charges shall be comprised of the same levels and proportion of profit and cost and commensurate with the market rate for the time being for the Changed Supply. In the event of any breach of this clause, NSG shall notify the Supplier and the Supplier shall provide a revised draft Change Order.

6.6 Where so required by NSG, the Supplier agrees that it may be required to provide:

- (a) open book evidence to support the calculations made under clause 6.5; and
- (b) any further information to enable NSG to consider the draft Change Order.

6.7 If the Supplier submits a draft Change Order in order to comply with any Applicable Laws and such changes do not affect the nature, scope of, or Charges for the Services, NSG shall not unreasonably withhold or delay consent to it.

6.8 If the parties:

- (a) agree to a draft Change Order, they shall sign it and that Change Order shall amend this Agreement; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with clause 33.

7 Audit

7.1 The Supplier shall allow NSG (and its clients, the ultimate beneficiaries of the Supply and any of its or their representative) to access the Supplier's premises, personnel, systems, files and relevant records at any time to verify that:

- (a) the Supplier is in compliance with its obligations under this Agreement, including but not limited to those detailed under clause 5; and
- (b) the Charges and any other sums charged to NSG under this Agreement are accurate.

7.2 Subject to the confidentiality obligations set out in these Terms, the Supplier shall provide NSG (and its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) with all reasonable co-operation, access and assistance in relation to each audit.

7.3 NSG (and clients, the ultimate beneficiaries of the Supply and any of its or their representatives) shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

7.4 The Supplier agrees and acknowledges that where and to the extent that it fails any such inspection or audit, it shall be responsible to NSG in respect of any and all costs reasonably and properly incurred by NSG in carrying out such inspection or audit.

8 Charges and Payment

- 8.1 The Charges:
- (a) shall be the price set out in the Purchase Order, or as otherwise agreed between the parties in writing;
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, Equipment or any Deliverables, unless otherwise agreed in writing and no extra or varied charges shall be effective unless agreed in writing and signed by NSG; and
 - (c) are exclusive of amounts in respect of VAT chargeable from time to time and which shall only be payable on receipt by NSG of a valid VAT receipt.
- 8.2 The Supplier shall raise invoices in accordance with the applicable Schedule and by submitting the same to accounts@nsgltd.com, dependent on the nature of the Supply. Each invoice shall include such supporting information required by NSG to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order Number and Project Reference.
- 8.3 If NSG disputes any invoice or other statement of monies due, NSG shall notify the Supplier in writing in advance of making payment. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of NSG giving notice to the Supplier, the dispute shall be resolved in accordance with clause 33. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 8.4. The Supplier's obligations to continue with the Supply shall not be affected by any payment dispute.
- 8.4 NSG shall pay the invoiced amounts within thirty days of the end of the month in which the applicable invoice was raised, unless otherwise agreed between the parties.
- 8.5 If NSG fails to make a payment due to the Supplier under this Agreement by the due date, then NSG shall pay interest on the overdue sum at 1% a year above the Bank of England's base rate from time to time (but at 1% a year when that base rate is below 0%) from the due date until payment of the overdue sum, whether before or after judgment.
- 8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods and/or Services, and the Supplier shall allow NSG to inspect such records at all reasonable times on request.
- 8.7 NSG may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to NSG against any liability of NSG to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement.

9 Intellectual Property Rights

- 9.1 In relation to the NSG Materials:
- (a) NSG and its licensors shall retain ownership of all Intellectual Property Rights in the NSG Materials;
 - (b) NSG grants to the Supplier:
 - (i) a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the NSG Materials for the term of this Agreement for the purpose of providing the Supply to NSG; or
 - (ii) in the event that it fails to comply with clause 9.1(b)(i) then without prejudice to NSG's other rights and remedies in connection with such failure the Supplier grants to NSG, with immediate effect, an irrevocable, exclusive, non-terminable, sub-licensable, royalty-free licence to copy and make full use of any Deliverables prepared by, or on

behalf of, the Supplier for any purpose and in respect of which NSG may, at any time (whether before or after completion of the Services, or after termination of this Agreement), request a copy or copies of (some or all of) the Deliverables from the Supplier at no charge.

9.2 In relation to the Deliverables:

- (a) any and all Intellectual Property Rights of the Supplier vesting therein are hereby assigned to NSG with full right, title and interest;
- (b) the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and
- (c) the Supplier shall, promptly at NSG's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as NSG may from time to time require for the purpose of securing for NSG all right, title and interest in and to the Intellectual Property Rights assigned to NSG in accordance with this clause.

9.3 The Supplier:

- (a) warrants that:
 - (i) it has full clear and unencumbered title to all Deliverables, and that at the date of delivery of such items to NSG, it will have full and unrestricted rights to sell, transfer and assign all such items to NSG; and
 - (ii) the receipt, use and onward supply of the Supply and the Deliverables (excluding the NSG Materials) by NSG shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify NSG in full against all Losses (including but not limited to any direct, indirect or consequential Losses, loss of profit, loss of reputation suffered or incurred by NSG arising out of, or in connection with, the receipt, use or supply of the Supply and the Deliverables (excluding the NSG Materials)).

10 Data Protection

- 10.1 For the purposes of this clause 10, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the UK GDPR, and supervisory authority shall have the meaning given to it in the EU GDPR.
- 10.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws and NSG's Supplier Information Security Policy (available on request). This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Applicable Data Protection Laws.
- 10.3 The parties have determined that, for the purposes of Applicable Data Protection Laws the Supplier shall process any personal data supplied to it in the course of the Supply as processor on behalf of NSG.
- 10.4 This clause 10.4 applies where the Supplier acts as controller pursuant to clause 10.4. Without prejudice to clause 10.2 and provided always that if there are any inconsistencies or conflict between the terms of the Supplier Privacy Policy and this Agreement, this Agreement shall take precedence, the Supplier:
- (a) shall process all Supplier Personal Data strictly in accordance with its privacy policy (**Supplier Privacy Policy**);

- (b) shall not amend the Supplier Privacy Policy without NSG's prior written consent;
- (c) shall promptly comply with all reasonable instructions of NSG in connection with the Supplier Privacy Policy, and any amendments, shall promptly provide copies of the same to NSG on request in a commonly available electronic format, and hereby consents to NSG making the Supplier Privacy Policy available to any applicable data subjects;
- (d) undertakes, warrants and represents that the Supplier Privacy Policy, and any amendments, will at all times comply with Applicable Data Protection Laws and that it will not make any amendments to the Supplier Privacy Policy where this would be in contravention of Applicable Data Protection Laws;
- (e) as between the parties, is solely responsible for ensuring that the processing of Supplier Personal Data complies with Applicable Laws, including Applicable Data Protection Laws, and in particular, that all required fair processing information is provided to the relevant data subjects; and
- (f) promptly comply with any reasonable instructions received from NSG to display or otherwise make available NSG's then-current version of its privacy policy via the Supply provided by the Supplier. Such instructions may include implementing a reasonable process to certify that the data subject has acknowledged its terms.

10.5 Without prejudice to clause 10.2, the Supplier shall, in relation to NSG Personal Data:

- (a) process that personal data only on the documented written instructions of unless the Supplier is required by Applicable Laws to otherwise process that NSG Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing NSG Personal Data, the Supplier shall promptly notify NSG of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying NSG on important grounds of public interest. The Supplier shall immediately inform NSG if, in the opinion of the Supplier, the instructions of NSG infringe Applicable Data Protection Laws;
- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of NSG Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
 - (i) the pseudonymisation and encryption of NSG Personal Data;
 - (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (iii) the ability to restore the availability and access to NSG Personal Data in a timely manner in the event of a physical or technical incident; and
 - (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (c) ensure and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (d) promptly assist NSG, at the Supplier's expense, in responding to any request from a data subject and in ensuring compliance with NSG's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Supplier shall promptly notify NSG if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of NSG Personal Data;

- (e) notify NSG without undue delay (and no later than 2 Business Days) after becoming aware of a personal data breach and on suspecting the same, the Supplier shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to NSG under this clause 10.5(e) and shall provide a copy of this initial assessment along with such notification;
- (f) at the written direction of NSG, delete or return to NSG all NSG Personal Data on termination or expiry of the agreement, and certify to NSG in writing it has done so, unless the Supplier is required by Applicable Law to continue to process that NSG Personal Data, in which case the Supplier shall promptly notify NSG, in writing, of what that Applicable Law is and shall only be permitted to process that NSG Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 10 shall continue to apply to such NSG Personal Data notwithstanding the termination or expiry of this Agreement for as long as such NSG Personal Data is processed by the Supplier. For the purposes of this clause 10.5(f) the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and
- (g) maintain adequate records, and, on NSG's request, make available such information as NSG may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by NSG (and its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) or their designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this clause 10.

10.6 The Supplier shall not, without the prior written consent of NSG (and in any event subject to the Supplier providing NSG with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):

- (a) appoint or replace (or change the terms of the appointment of) any other processor in relation to NSG Personal Data or transfer any NSG Personal Data to the same; or
- (b) carry out, via itself or via any other processor, any processing of NSG Personal Data, or transfer any NSG Personal Data, outside of the UK, including processing NSG Personal Data on equipment situated outside of the UK.

10.7 The Supplier shall, indemnify and keep NSG indemnified from and against any and all Losses of any kind arising from any claim or demand brought by any person, data subject, Commissioner or supervisory authority as a result of any breach or alleged breach by Supplier of any Applicable Data Protection Law or its obligations under liability for Losses arising from breaches of this clause 10.

11 Insurance

11.1 During this Agreement and for a period of seven years afterwards the Supplier shall unless NSG otherwise notifies the Supplier in writing, maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance for not less than £5 million per claim;
- (b) product liability insurance for not less than £5 million per claim; and
- (c) where the Supplier is providing Services, professional indemnity insurance for not less than £1 million per claim.

11.2 The Supplier shall ensure that NSG's interest is noted on each insurance policy, or that a generic interest clause has been included.

11.3 On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to NSG. On NSG's written request, the Supplier shall provide NSG with copies of the insurance policy certificates and details of the cover provided.

- 11.4 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this Agreement which they are contracted to fulfil.
- 11.5 The Supplier shall:
- (a) do nothing to invalidate any insurance policy or to prejudice NSG's entitlement under it; and
 - (b) notify NSG if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 11.6 The Supplier's liabilities under this Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 11.1.
- 11.7 If the Supplier fails or is unable to maintain insurance in accordance with clause 11.1, or fails to provide evidence that it has paid the current year's premiums, NSG may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

12 Liquidated Damages – Special Attention is Drawn to this Clause

- 12.1 If the Supplier fails to meet any deadline for or defaults in, performance of any element of the Supply, the Supplier shall pay to NSG as liquidated damages, 1% of the Charges payable by NSG to the Supplier for the Supply in question for each day's delay or default.
- 12.2 The Supplier shall pay these liquidated damages on demand or NSG may deduct them from its payments of the Charges to the Supplier.
- 12.3 The liquidated damages payable under this clause 12 shall accrue from the first day on which the Supplier has delayed or defaulted in the performance of its obligations and shall continue until the earlier of:
- (a) the Supplier fulfilling the delayed or defaulted obligation in question; or
 - (b) termination of this Agreement by NSG.
- 12.4 This clause 12.3 is without prejudice to the right of NSG to claim general damages arising out of the associated delay or default of the Supplier.
- 12.5 The parties confirm that these liquidated damages are reasonable and proportionate to protect NSG's legitimate interest in performance and represent a genuine pre-estimate of its Losses during the period of such delay or default.

13 Limitation of Liability – Special Attention is Drawn to this Clause

- 13.1 References to liability under this clause include every kind of liability arising under or in connection with this Agreement, including liability:
- (a) in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
 - (b) arising out of any use made of the Supply by NSG or a third party.
- 13.2 Nothing in this Agreement shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by:
 - (i) section 12 of the Sale of Goods Act 1979; or
 - (ii) section 2 of the Supply of Goods and Services Act 1982; or

(d) any matter in respect of which it would be unlawful to exclude or restrict liability.

13.3 Subject to clause 13.2:

- (a) NSG shall under no circumstances whatsoever be liable to the Supplier for any:
- (i) loss of profit;
 - (ii) loss of goodwill;
 - (iii) loss of business;
 - (iv) loss of business opportunity;
 - (v) loss of anticipated saving;
 - (vi) loss or corruption of data or information; or
 - (vii) Losses of an indirect, special or consequential nature; and
- (b) NSG's total liability to the Supplier in respect of all other Losses pertaining to a particular element of the Supply shall in no circumstances exceed the total Charges paid by NSG to the Supplier for that Supply.

14 Indemnity and Guarantee – Special Attention is Drawn to this Clause

14.1 References to indemnities under this clause include indemnities for every kind of liability arising under or in connection with this Agreement, including liability:

- (a) in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
- (b) arising out of any use made of the Supply by NSG or a third party.

14.2 The Supplier shall indemnify NSG, keep NSG indemnified and hold NSG harmless from and against any and all Losses suffered or incurred by NSG arising out of or in connection with this Agreement and the Supplier's provision of the Supply, including but not limited to:

- (a) any claim made against NSG for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Supply and any Deliverables;
- (b) any claim made against NSG by a third party arising out of, or in connection with, the Supply;
- (c) any claim made against NSG by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Supply; and
- (d) otherwise than as detailed above, under clauses 9.3(b) and 10.7.

14.3 If the Supplier is required to indemnify NSG under this clause 14, NSG shall:

- (a) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity above (**Claim**);
- (b) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, always provided that the Supplier shall obtain NSG's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Supplier with such reasonable assistance regarding the Claim as is required by the Supplier, subject to reimbursement by the Supplier of NSG costs so incurred on a full indemnity basis; and
- (d) not, without prior consultation with the Supplier, make any admission relating to the Claim or attempt to settle it, provided that the Supplier considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of NSG into disrepute.

14.4 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), NSG shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to NSG in respect of the payment is the same as it would have been were the payment not subject to tax.

14.5 NSG may at its absolute discretion and at any time by serving written notice on the Supplier, require that the Supplier provide a parent company guarantee, corporate guarantee, performance bond or such other form of security for the Supplier's performance of its obligations under this Agreement, in such form as NSG may require.

15 Termination

15.1 Without limiting its other rights or remedies, NSG may terminate the Agreement (in whole or in part):

- (a) by giving the Supplier no less than one week's written notice for any reason provided that in so doing it shall pay the Supplier fair and reasonable compensation for any work in progress already carried out to the extent that that work in progress cannot be reutilised or otherwise mitigated in respect of the Supply as at the time of or in contemplation of termination; or
- (b) with immediate effect by giving written notice to the Supplier:
 - (i) where there is a Change of Control; or
 - (ii) in the event that any warranty given by the Supplier to NSG under this Agreement is found to be untrue or misleading.

15.2 Without limiting its other rights or remedies, either party may terminate the Agreement (in whole or in part) with immediate effect by giving written notice to other if:

- (a) the other party commits a material breach of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen days of receipt of notice in writing to do so;
- (b) the other party repeatedly or persistently breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(c) to 15.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- (l) the other party's financial position deteriorates to such an extent that in the notifying party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

15.3 On termination or expiry of this Agreement (or the applicable part), the Supplier shall promptly:

- (a) return to NSG all equipment, materials and property belonging to NSG that the Supplier had supplied to it in connection with the Supply under this Agreement;
- (b) return to NSG all documents and materials (and any copies) containing NSG's Confidential Information;
- (c) erase all of NSG's Confidential Information from its computer systems (to the extent possible);
- (d) deliver to NSG all of the Supply and Deliverables whether or not then complete; and
- (e) on request, certify in writing to NSG that it has complied with the requirements of this clause 15.3.

15.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

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

16 Brexit

16.1 If a Brexit Trigger Event occurs, NSG shall be permitted to:

- (a) require the Supplier to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event, in accordance with clause 16.2; and
- (b) if renegotiation fails, terminate this Agreement in accordance with clause 16.3.

16.2 NSG may initiate a negotiation under clause 16.1(a) by serving a notice (**Brexit Notice**) to the Supplier giving reasonable details of the relevant Brexit Trigger Event. On delivery of a Brexit Notice:

- (a) the parties shall meet either in person or remotely within 7 days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to the Agreement to alleviate the impact of the Brexit Trigger Event;

- (b) NSG shall provide information and documents, which in its sole opinion relate to the Brexit Trigger Event, to the Supplier provided always that information so disclosed shall be NSG's Confidential Information for the purposes of clause 19; and
- (c) any amendments to the Agreement shall be recorded in accordance with clause 32.

- 16.3 If the parties fail to agree a variation in accordance with clause 16.2 within 30 days of the date of the Brexit Notice, NSG may, without affecting any other right or remedy available to it, terminate the Agreement on immediate notice.
- 16.4 After delivery of a Brexit Notice, until the Agreement is varied under clause 16.2 or terminated under clause 16.3, the parties shall, unless prohibited by law, continue to comply with their respective obligations.
- 16.5 Save as expressly provided in this clause 16, a Brexit Trigger Event shall not terminate or alter (or give either party a right to terminate or alter) the Agreement or invalidate any of terms therein or discharge or excuse performance under it.
- 16.6 If there is an inconsistency between the provisions of this clause and any other provision of these Terms, the provisions of this clause 16 shall prevail.

17 Restrictive Covenants

- 17.1 In order to protect the legitimate business interests of NSG, the Supplier covenants with NSG that it shall not (whether directly or indirectly), except with the prior written consent of NSG:
- (a) attempt to solicit or entice away; or solicit or entice away, from the employment or service of NSG the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of NSG;
 - (b) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person;
 - (c) solicit or entice away (or attempt to solicit or entice away) from NSG the business or custom of any Restricted Customer;
 - (d) be involved with the provision of goods or services to any Restricted Customer;
 - (e) have any business dealings with, or solicit, entice or attempt to entice away, a Restricted Supplier, if such dealing, solicitation or enticement causes or is reasonably likely to cause such supplier to cease supplying, or to reduce its supply of goods or services to NSG, or to vary adversely the terms upon which it conducts business with NSG.
- 17.2 The Supplier shall be bound by the covenants set out in clause 17.1 during the term of this Agreement, and for a period of 12 months after termination or expiry of this Agreement.
- 17.3 If the Supplier commits any breach of this clause 17.1, it shall, on demand, pay to NSG a sum equal to one year's basic salary or the annual fee that was payable by NSG to the Restricted Person plus the recruitment costs incurred by NSG in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of NSG in performance.
- 17.4 The covenants in clause 17.1 are intended for the benefit of, and shall be enforceable to the fullest extent permitted by law, by NSG and any connected company, and NSG's customer (or the ultimate beneficiary of the Supply) and shall apply to actions carried out by the Supplier in any capacity (including as shareholder, partner, director, principal, consultant, officer, agent, via a group or connected company or otherwise) and whether directly or indirectly, on its own behalf or on behalf of, or jointly with, any other person.

18 Collateral Warranties and Novation

- 18.1 Within five Business Days of receiving a written request from NSG, the Supplier shall enter into a collateral warranty in favour of any third party with an interest in the Supply identified by NSG in its written request, in the form notified by NSG to the Supplier.
- 18.2 The rights of NSG and/or the Supplier to:
- (a) terminate the Supplier's engagement under this Agreement;
 - (b) agree to amend or otherwise vary or to waive the terms of this Agreement; or
 - (c) agree to settle any dispute or other matter arising out of or in connection with this Agreement on such terms as they shall in their absolute discretion think fit,
- shall not unless specifically detailed in any collateral warranty be subject to the consent of any third party with an interest in the Supply.
- 18.3 Within five Business Days of receiving a written request from NSG, the Supplier shall enter into a:
- (a) deed of novation with NSG and a third party identified by NSG in the form notified by NSG to the Supplier; and
 - (b) collateral warranty in favour of NSG immediately before novation takes place.

19 Confidentiality

- 19.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.
- 19.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement.
- 19.3 The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 19.4 The Supplier shall not make, nor permit any person to make, any public announcement concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of NSG, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

20 Force Majeure

- 20.1 NSG shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from a Force Majeure Event.
- 20.2 NSG shall notify the Supplier within a reasonable period of time of any Force Majeure Event and NSG shall use reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 20.3 If a Force Majeure Event prevents, hinders or delays NSG's performance of its obligations for a continuous period of more than thirty days, NSG may terminate the Agreement immediately by giving written notice to the Supplier.

21 Time of the Essence – Special Attention is Drawn to this Clause

- 21.1 Time is of the essence for all dates and times relating to the Supplier's compliance with its obligations under this Agreement.
- 21.2 Time is not of the essence for any dates and times relating to NSG's compliance with its obligations under this Agreement.

22 Notices

- 22.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party:

(a) in the case of:

- (i) NSG, at NSG's Premises; or
- (ii) the Supplier, its registered office (if it is a company) or its principal place of business (in any other case),

and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service or commercial courier; or

(b) the following email addresses:

- (i) procurement@nsgltd.com and commercial@nsgltd.com in the case of NSG; or
- (ii) the email address referred to in this Agreement in the case of the Supplier,

or such other address as that party may have specified to the other party in writing in accordance with this clause.

- 22.2 A notice or other communication shall be deemed to have been received, if delivered:

- (a) personally, when left at the address referred to in clause 22.1(a);
- (b) by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (c) by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) by email, on the second Business Day after transmission.

- 22.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

23 Assignment and Other Dealings

- 23.1 The Supplier may not Transfer all or any of its rights or obligations under the Agreement without the prior written consent of NSG.
- 23.2 NSG may Transfer all or any of its rights or obligations under the Agreement.

24 Rights and Remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25 Severance

- 25.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

25.2 If any provision or part-provision of this Agreement is deemed deleted under clause 25.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26 Waiver

26.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

26.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

27 Further Assurance

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

28 No Partnership or Agency

28.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

28.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

29 No Relationship of Employer and Employee

Nothing in the Agreement is intended to, or shall be deemed to, establish any relationship of employer and employee between the parties.

30 Entire Agreement

30.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

30.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

30.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

31 Third Parties

31.1 This Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

31.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

32 Variation

Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by both parties.

33 Multi-Tiered Dispute Resolution

33.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level of each party shall attempt in good faith to resolve the Dispute;
- (b) if the employees at management level of each party are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to directors of each party who shall attempt in good faith to resolve it; and
- (c) if the directors of each party are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the dispute resolution procedure detailed in the Purchase Order or as otherwise agreed between the parties. Unless otherwise agreed between the parties within 14 days the parties may have recourse to the courts in accordance with clause 35.

33.2 The commencement of any mediation proceedings shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 35, which clause shall apply at all times.

34 Governing Law

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

35 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or these Terms or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 – Terms and Conditions for the Purchase of Goods

1 Definitions

In this Schedule, the following definitions apply:

Delivery: means delivery of the Goods to NSG by or on behalf of the Supplier DDP (Delivered Duty Paid) at the Location (Incoterms, 2020) in accordance with this Schedule and **Deliver** and **Delivered** shall be construed accordingly.

Location: means the location for Delivery, being by default NSG's Premises, unless otherwise specified in the Purchase Order or subsequently notified to the Supplier by NSG in advance of Delivery.

Warranty Period: the period of 10 years from the date on which the Goods are first put into operational use, whether by NSG or its customer.

2 Supply of the Goods

2.1 The Supplier warrants, undertakes and represents that the Goods shall in every respect:

- (a) correspond with their description and any applicable Specification;
- (b) be of the best quality, made of the highest quality materials and fit for any purpose held out by the Supplier or expressly made known to the Supplier by NSG and in this respect NSG relies on the Supplier's skill and judgment;
- (c) be properly packaged and secured in such manner as to enable them to reach the Location in the required condition;
- (d) be free from defects in design, materials and workmanship as at the date of Delivery notwithstanding that NSG may have initially carried out such design;
- (e) be executed in a proper and skilful manner by appropriately qualified and experienced personnel; and
- (f) comply with all Applicable Laws relating to the manufacture, labelling, packaging, storage, handling, sale, delivery and intended usage of the Goods.

2.2 NSG (and its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) shall have the right to inspect and test the Goods at any time on reasonable notice and at a time to be agreed between the parties before or after Delivery and provided always that no inspection or testing by NSG (or its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) shall be deemed to constitute NSG's acceptance of the Goods or diminish or otherwise affect the Supplier's obligations under the Agreement.

2.3 If following such inspection or testing NSG (or its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) considers that the Goods do not conform with the Supplier's warranties, undertakings and representations at paragraph 2.1 or are otherwise defective, incorrect or not in compliance with the Specification or this Agreement, NSG shall inform the Supplier and the Supplier shall at its own cost, immediately take such remedial action as is necessary and determined by NSG as appropriate to ensure compliance.

2.4 Notwithstanding paragraphs 2.2 – 2.3 above, the Supplier shall inspect and test the Goods for compliance with the Agreement prior to their Delivery.

2.5 The Supplier shall, if requested, supply NSG with such certificates of origin and/or testing as NSG may require. Such certificates must state the relevant Purchase Order numbers together with any item numbers.

3 Delivery of the Goods

3.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to reasonably expect them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows:
 - (i) the date of the Purchase Order;
 - (ii) the Purchase Order number;
 - (iii) the type and quantity of the Goods (including the code number of the Goods (where applicable));
 - (iv) special storage, delivery and usage instructions (if any); and
 - (v) if the Goods are being Delivered by instalments, the outstanding balance of Goods remaining to be Delivered; and
- (c) if the Supplier requires NSG to return any packaging materials for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

3.2 The Supplier shall Deliver the Goods:

- (a) on the date specified in the Purchase Order or, if no such date is specified, then as soon as reasonably practicable and where and for the avoidance of doubt, the Supplier's compliance with such dates and times shall be of the essence; and
- (b) during NSG's normal hours of business on a Business Day, or as otherwise agreed between the parties,

provided that where NSG is unable to accept Delivery for whatever reason, the Supplier shall be required to store the Goods at its own cost and risk until such time as an alternative date for Delivery has been agreed.

3.3 Early Delivery is not permitted except as provided in the Purchase Order or otherwise agreed between the parties. Packaging, transport and other cost of Delivery shall be included in the Charges unless otherwise expressly stated in the Purchase Order.

3.4 If the Supplier Delivers:

- (a) less than one hundred (100%) of the quantity of Goods ordered, NSG may save where the remaining balance is due to follow in a separate instalment, reject the Goods; or
- (b) more than one hundred per cent (100%) of the quantity of Goods ordered, NSG may at its sole discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier Delivers more than 10% of the quantity of Goods ordered and NSG expressly accepts the Delivery of the additional quantity of the Goods in writing, a pro rata adjustment shall be made to the invoice for the Goods.

3.5 NSG may delay or alter dates and places by giving the Supplier reasonable written notice.

3.6 The Supplier shall not Deliver the Goods in instalments without NSG's prior written consent. Where it is agreed that the Goods are to be Delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to Deliver any one instalment on time or at all or any

defect in an instalment shall entitle NSG to the remedies set out in paragraphs 6.1, 6.2, and/or 6.3 below.

4 Title and Risk

4.1 Risk in the Goods shall pass to NSG on Delivery.

4.2 Title to the Goods shall pass to NSG on the earlier of Delivery or NSG making payment for any element of the Charges attributable to those Goods.

5 Invoicing

Unless otherwise agreed between the parties, the Supplier may raise its invoice(s) for the Goods at any time following the completion of Delivery.

6 Defects and Remedies

6.1 If the Supplier fails (in each case to the extent applicable) to Deliver the Goods on the applicable date, NSG shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent Delivery of the Goods which the Supplier attempts to make;
- (c) where NSG has paid in advance for Goods which have not been Delivered by the Supplier, to have such proportion of the sums attributable to the undelivered portion refunded by the Supplier; and
- (d) to claim liquidated damages in accordance with clause 12.

6.2 If the Supplier has Delivered Goods that do not comply with the warranties, undertakings and representations set out in paragraph 2.1, without limiting its other rights or remedies, NSG shall (in each case to the extent applicable) have one or more of the following rights:

- (a) to reject the Goods (in whole or in part) and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the Charges attributable to the rejected Goods (if paid) as determined by NSG using its professional discretion;
- (d) take, at the cost and liability of the Supplier, steps required to make good any defects by replacing or repairing any rejected Goods (whether itself and/or by means of alternative suppliers, including by purchasing substitute Goods);
- (e) to refuse to accept any subsequent Delivery of the Goods which the Supplier attempts to make; and
- (f) to claim damages for any Losses incurred by NSG arising from the Supplier's failure to supply Goods in accordance with paragraph 2.1.

6.3 NSG's rights under paragraph 6.2 shall, unless otherwise specified in the Purchase Order, cease at the end of the Warranty Period. In the case of latent defects, NSG shall continue to be entitled to exercise its rights after the Warranty Period expires, but only if it exercises it within 28 days of the date the latent defect becomes apparent to NSG. In the case of defects for which an Applicable Law provides a longer Warranty Period than this paragraph 6.3, such longer period shall apply.

6.4 These Terms shall extend to any repaired or replacement Goods supplied by the Supplier and any applicable Warranty Period in respect of the same shall be deemed to recommence on the date on which they are accepted by NSG.

Schedule 2 – Terms and Conditions for the Purchase of Services

Part 1 - General

1 Definitions

In this Schedule, the following definitions apply:

AWR 2010: the Agency Workers Regulations 2010 (SI 2010/93).

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

Deemed Employment: an engagement to which section 61M(d) of the Income Tax (Earnings and Pensions) Act 2003 applies.

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person;
- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agrément; or
- (e) having been supplied or placed on the market in breach of Regulation (EU) No 305/2011 and the Construction Products Regulations 2013 (SI 2013/1387).

Engagement: means the engagement of the Supplier (and its personnel) under this Schedule.

Key Personnel: the Supplier's manager and those individuals identified or otherwise agreed as being key personnel between the parties, or any replacement individuals appointed by the Supplier pursuant to paragraph 4.2.

Project: the project for which the Services are being supplied.

Protocol: has the meaning given in paragraph 9.2.

Screen: carry out pre-vetting checks to the level and criteria as required by NSG from time to time.

Site: the location(s) (if any) at which the Services are to be performed, whether owned or operated by NSG or which it is otherwise granted access to.

Supplied Personnel: means the personnel supplied by the Supplier to NSG for the purposes connected with this Engagement as set out in the Purchase Order or otherwise agreed between the parties from time to time.

2 Supply of the Services

2.1 The Supplier warrants, undertakes and represents that the Services and any Deliverables shall in every respect:

- (a) correspond with their description and any applicable Specification and that where any such Specification has been prepared by or on behalf of NSG that:

- (i) it has fully examined and ratified the accuracy and completeness of the same and/or has notified NSG of any inconsistencies, inaccuracies or incompleteness of the same; and
 - (ii) the Supplier's Proposal complies with the Specification in all respects;
 - (b) be performed in accordance with any works programme and/or deadlines contained within the Specification or the Purchase Order (as the case may be). Time shall be of the essence in this regard;
 - (c) be of the best quality and fit for any purpose held out by the Supplier or expressly made known to the Supplier by NSG and in this respect NSG relies on the Supplier's skill and judgment;
 - (d) be free from defects in design, materials and workmanship as at the date of delivery notwithstanding that NSG may have initially carried out such design;
 - (e) be executed with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade and by appropriately qualified and experienced personnel; and
 - (f) comply with all Applicable Laws relating to the delivery and intended usage of the Services.
- 2.2 The Supplier shall not specify for use in the Project or in the course of providing the Services, makes use of anything (as the case may be), which is Deleterious at the time of specification or use.
- 3 The Site**
- 3.1 The Supplier is deemed to have full knowledge of the Site, its conditions and including any sub-structure, related structures or third party structures or sites which affect the same and the Supplier warrants that the condition of the Site is suitable for the performance of the Services.
- 3.2 If, in the opinion of the Supplier, the ground of the Site (including any private access road or track) is unsuitable for the Services to be performed on, travelled over, the Supplier shall take all necessary steps at its own cost and risk to ensure such suitability.
- 3.3 The Supplier is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site in the course of accessing, moving around and egressing from the Site and shall unless otherwise notified to it or agreed between the parties, liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.
- 3.4 The Supplier shall be responsible:
- (a) for clearing the Site, public highways and access roads, including of any and all vehicles, plant, machinery, goods or other materials or waste not required in connection with this Agreement and for setting up any and all required barricades, cones or tapes in advance of the performance of the Services;
 - (b) for any road or other closures connected with a public authority or third party and any associated Losses, notwithstanding that the Supplier may have arranged these as agent for NSG;
 - (c) for its own unobstructed access to, movement around and egress from the Site for any reason reasonably required in connection with the performance of its obligations under this Agreement; and
 - (d) unless otherwise agreed in writing, for the unloading and loading of any goods, equipment, plant and machinery inherent in the supply of the Services.

4 The Supplier's Obligations & Personnel

- 4.1 The Supplier shall observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Sites from time to time. NSG reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the Site, which shall only be given to the extent necessary for the performance of the Services.
- 4.2 In relation to the Supplier's personnel, the Supplier shall:
- (a) ensure that its personnel devote sufficient time and attention to fulfilling their respective roles;
 - (b) use the Key Personnel in the provision of the Services;
 - (c) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this Agreement;
 - (d) ensure that the Key Personnel have the ability to bind the Supplier;
 - (e) promptly inform NSG of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by NSG, provide a suitably qualified replacement for such individual; and
 - (f) use its best endeavours not to make any changes to the Key Personnel throughout the term of this Agreement and obtain the prior written approval of NSG (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.
- 4.3 NSG may at any time instruct the Supplier to remove any person engaged in performing the Services if, in NSG's reasonable opinion, that person's performance or conduct is unsatisfactory. The Supplier shall remove any such person promptly. Any personnel appointed by the Supplier to replace staff removed under this paragraph 4 shall be subject to the written approval of NSG (such approval not to be unreasonably withheld or delayed).

5 Invoicing

- 5.1 Unless otherwise agreed between the parties, in advance of the Supplier raising any invoice for the Services, it shall be required to follow the process set out in this paragraph 5. The Supplier shall be required to make an application for payment to NSG's Procurement Manager via procurement@nsgltd.com at any agreed stages or in the absence of which at any time following the satisfactory completion of the Supply. This application for payment shall state the net sum that the Supplier considers will be due and the basis on which it is calculated.
- 5.2 Following receipt of such payment application, NSG shall generate a payment certificate for issue to the Supplier no later than 14 days thereafter, which must state:
- (a) the gross amount (before the sum of the amounts (if any) that have previously been paid by NSG to the Supplier in respect of the same) that NSG considers to be or to have been due;
 - (b) the net amount NSG considers to be or to have been due under the payment notice; and
 - (c) the basis on which the amounts stated in the payment certificate are calculated,
- it being immaterial that the net sum considered to be due is zero. NSG's payment certificate shall be conclusive as to the amount due.
- 5.3 In respect of any payment, if paragraph 5.2 is not complied with (within the relevant period for compliance), the Supplier may give a payment notice to NSG at any time afterwards, which must state:
- (a) the gross amount that the Supplier considers to have been due at the payment due date;

- (b) the sum of the amounts (if any) that have previously been paid by NSG to the Supplier, in respect of the same;
- (c) any amounts the Supplier considers NSG to be entitled to deduct;
- (d) the net amount the Supplier considers to have been due under the payment notice; and
- (e) the basis on which the amounts stated in the payment notice are calculated,

it being immaterial that the net sum considered to be due is zero and for the avoidance of doubt where the Supplier is required to issue a payment notice in accordance with this clause no effect shall be had on the final date for payment.

- 5.4 NSG may give the Supplier notice of its intention to pay less than the notified sum and such notice must specify the sum that NSG considers to be due on the date the payment reduction notice is served and the basis on which that sum is calculated. A payment reduction notice may not be given before the payment application or payment notice by reference to which the notified sum is determined nor any later than five days before the final date for payment. It is immaterial that the sum referred to in this paragraph may be zero. If NSG serves a payment reduction notice which complies with this paragraph, the notified sum is the adjusted sum.

6 Defects and Remedies

- 6.1 If in performing the Services, the Supplier fails to meet any relevant milestones or deadlines, then (without prejudice to NSG's right to terminate this Agreement and any other rights it may have), NSG may:

- (a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (b) purchase substitute services from elsewhere and reclaim from the Supplier any Losses incurred (on an indemnity basis) as a result of procuring such services from a third party instead of the Supplier; and
- (c) where NSG has paid in advance for the Services which have not been delivered by the Supplier, to have such proportion of the sums attributable to the undelivered portion refunded by the Supplier.

- 6.2 If the Supplier has performed Services or provided Deliverables that do not comply the warranties, undertakings and representations set out in paragraph 2. without limiting its other rights or remedies, NSG shall (in each case to the extent applicable) have one or more of the following rights:

- (a) to reject the Services and/or Deliverables (in whole or in part);
- (b) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repeat performance of the rejected Services and provide new Deliverables, or to provide a full refund of the price of the rejected Services or Deliverables (if paid) as determined by NSG using its professional discretion;
- (d) take, at the cost and liability of the Supplier, steps required to make good any defects (whether itself and/or by means of alternative suppliers);
- (e) to refuse to accept any repeated performance of the Services which the Supplier attempts to make; and
- (f) to claim damages for any Losses incurred by NSG arising directly and wholly from the Supplier's failure to supply Services in accordance with paragraph 2.

- 6.3 The Supplier's duties or liabilities under this Agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (iii) the Site; or
 - (iv) the Project; or
 - (v) any designs or specifications for the Site or the Project; or
 - (vi) any testing of any Services, work, goods, materials, plant or equipment; or
 - (b) any omission to approve, inspect or test,
- by or on behalf of NSG.

7 Status

- 7.1 The relationship of the Supplier to NSG will be that of independent contractor and nothing in this agreement shall render it or any of its personnel (including any Supplied Personnel) an employee, worker, agent or partner of NSG and the Supplier shall not hold itself out as such.
- 7.2 The Supplier shall promptly give to NSG all such information and documentation as it may reasonably require from time to time in order for NSG to determine whether the Engagement is or will be within the rules in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and is or will be Deemed Employment and, if NSG determines the Engagement is Deemed Employment, in order to comply with any obligation on NSG to deduct and account for tax or national insurance contributions from the fees due. The Supplier shall promptly inform NSG of any material change to any information or documentation previously provided in compliance with this paragraph and shall also promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to determining whether the Engagement is Deemed Employment. Subject to clause 32, NSG reserves the right to amend the terms of the Engagement, and this agreement, if the Engagement is determined to be Deemed Employment.
- 7.3 The Supplier shall be fully responsible for and shall indemnify NSG for and in respect of the following:
- (a) subject to paragraph 7.4, any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from a determination that the Engagement is Deemed Employment or made in connection with either the performance of the Supply or any payment or benefit received by the Supplier (or any of its personnel) in respect of the same, where such recovery is not prohibited by law. The Supplier shall further indemnify NSG against all Losses incurred or payable by NSG in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of NSG's negligence or wilful default; and
 - (b) any liability arising from any employment-related claim or any claim based on worker status (including associated Losses) brought by the Supplier (and any of its personnel) against NSG arising out of or in connection with the provision of the Supply, except where such claim is as a result of any act or omission of NSG.
- 7.4 The indemnity in paragraph 7.3(a) does not apply to any income tax or National Insurance contributions deducted by NSG if the Engagement is Deemed Employment and NSG makes any deductions from fees due under this Agreement prior to payment to the Supplier.
- 7.5 NSG may at its option satisfy the indemnity in paragraph 7.3 (in whole or in part) by way of deduction from payments due to the Supplier.
- 7.6 The Supplier warrants that it is not, nor will it prior to the cessation of this Agreement, become a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

Part 2 – Professional Services

8 Performance

8.1 In providing the Services, the Supplier shall (in each case where and to the extent applicable):

- (a) carry out and fulfil, in all respects, the duties of:
 - (i) a designer (and where applicable, principal designer) under the CDM Regulations; and
 - (ii) its profession, as required by Applicable Law and having regard to the nature and extent of the Supply;
- (b) provide NSG with as many copies of the "as built" drawings in connection with the Project as NSG reasonably requires from time to time; and
- (c) comply with and fulfil such specific requirements as are notified to it from time to time by NSG commensurate with the professional standing and qualifications held the Supplier and as required in the course of performing the Services.

8.2 The Supplier warrants and undertakes that it shall:

- (a) perform the Services and prepare all Deliverables for those elements of the Project for which for the Supplier is responsible according to any programme or, in the absence of a programme, in sufficient time to facilitate the efficient progress of the Project;
- (b) ensure that the Project complies with all planning agreements, permissions and conditions; and
- (c) not cause or contribute to any breach by NSG of any agreement between NSG and a third party relating to the Project.

9 Building Information Modelling

9.1 NSG and the Supplier shall:

- (a) comply with their respective obligations set out in the Protocol, in the form agreed between the parties (**Protocol**); and
- (b) have the benefit of any rights granted to them in the Protocol.

9.2 NSG and the Supplier agree that, this Agreement shall be amended as set out in the Protocol.

Part 3 – Labour Services

10 Obligations

10.1 The Supplier shall:

- (a) Screen all Supplied Personnel before supplying them to NSG; and
- (b) supply only those who:
 - (i) meet the minimum criteria for the performance of the Services; and
 - (ii) have the right to work in the United Kingdom and, in particular, the Supplier shall comply with the Immigration Asylum and Nationality Act 2006, the Immigration Act 2016 and other Applicable Laws (including those regarding the reporting of labour movements, concealed employment and the employment of foreign workers).

- 10.2 The Supplier shall ensure that all Supplied Personnel are contractually obliged to comply with:
- (a) all Applicable Laws applicable to the performance of the Services and applicable to NSG's business;
 - (b) NSG's health and safety policy whilst on NSG's premises or any of NSG's customers' or suppliers' or agents' (direct or indirect) premises; and
 - (c) a restriction not to disclose any Confidential information of NSG or of any of NSG's customers or suppliers or agents (direct or indirect), which they may acquire during the course of the Engagement.
- 10.3 The Supplier shall and shall ensure that any subcontractor or other intermediary shall at all times comply with their obligations under the AWR 2010. If either party receives an allegation that there has been a breach of the AWR 2010 in relation to the supply of any Supplied Personnel to NSG by the Supplier, it shall provide a copy of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.
- 10.4 The Supplier will within seven days of receiving a written request from NSG provide it with details of any information which NSG may reasonably request, including that in relation to any payments made by the Supplier, its subcontractors or any other intermediaries to any Supplied Personnel.
- 10.5 Where any Supplied Personnel are required by law or any professional body to have any qualifications, authorisations or certification to perform the Services or work in connection with the Project, the Supplier shall obtain, and offer to provide copies of, any relevant qualifications or authorisations or certification and any references required by NSG. The Supplier shall also take all necessary steps to confirm that the Supplied Personnel are suitable for the Engagement. If the Supplier is unable to fully comply with these requirements, it shall inform NSG of the steps it has taken to obtain the necessary information.
- 10.6 In respect of any of the Supplied Personnel, the Supplier shall at any time on immediate request send NSG written confirmation of:
- (a) their identity;
 - (b) their experience, training, qualifications and authorisations necessary for the Engagement; and
 - (c) their willingness to carry out the Services.
- 10.7 The Supplier shall remain responsible for the actions and omissions of any Supplied Personnel provided by the Supplier, notwithstanding that they may be acting under the direction of NSG.

11 Unsatisfactory Supplied Personnel

- 11.1 The Supplier shall notify NSG immediately if it believes that any Supplied Personnel are unsuitable for the Engagement or if it becomes aware of any matter that indicates that a they may be unsuitable for the Engagement or is inconsistent with any information previously provided including where any Supplied Personnel cease to have the appropriate skills, approvals or a right to work in the United Kingdom.
- 11.2 If NSG decides that any Supplied Personnel are unsuitable to perform the Services, then it shall notify the Supplier in writing of that fact and they shall immediate cease to be involved in the Engagement and the Supplier shall provide a replacement.

12 Warranties and Indemnities

12.1 The Supplier warrants that:

- (a) it has the necessary expertise to provide the Services contemplated in this Agreement and will perform them in keeping with the highest professional business standards by supplying appropriately qualified, experienced and trained Supplied Personnel;
- (b) all Supplied Personnel are (and shall remain) employed by the Supplier or are (and shall remain) treated as employed by the Supplier under section 44 of the Income Tax (Earnings and Pensions) Act 2003;
- (c) all amounts paid (or to be paid) to the Supplied Personnel are (or will be) paid subject to the deduction of tax and national insurance contributions under PAYE and all such deductions are (or will be) paid together with employer national insurance contributions and other applicable levies, on time to HMRC;
- (d) it has complied with (and will continue to comply with) all tax and NICs obligations concerning the Supplier Personnel including making timely and accurate returns and the proper maintenance and preservation of records, and the Supplier has not been given any penalty, notice or warning regarding the same; and
- (e) such Supplied Personnel are competent in the performance of any purpose for which they are supplied and such Supplied Personnel shall be under the direction and control of NSG.

12.2 The Supplier shall indemnify NSG against any and all Losses arising out of or in connection with:

- (a) any transfer, or deemed or alleged transfer, by operation of law of any of the Supplied Personnel occurring pursuant to the termination of this Agreement; and
- (b) a breach or alleged breach by the Supplier, its subcontractors or any other intermediaries, of the AWR 2010.

Schedule 3 – Terms and Conditions for the Hire of Equipment

1 Definitions

In this Schedule, the following definitions apply:

Delivery Date: means the date on which the Equipment is to be delivered to NSG, as specified in the Purchase Order.

Hire Period: means the period of hire which shall commence from the Delivery Date and continue until the Equipment is made available by NSG for collection by the Supplier as may be varied or extended in accordance with these Terms.

Hire Rate: means the rate of hire as set out in the Purchase Order.

Site: the location at which the Equipment is to be delivered are to be performed, whether owned or operated by NSG or which it is otherwise granted access to.

Supplied Personnel: means the personnel supplied by the Supplier to NSG for the purposes connected with the hire of the Equipment.

Support: has the meaning given in paragraph 5.2.

2 Delivery, Acceptance and Hire Period

- 2.1 The Supplier shall deliver the Equipment on the agreed Delivery Date. In the event that the Supplier becomes aware of any likely delay it shall immediately notify NSG.
- 2.2 If NSG has agreed to collect or return any Equipment from the Supplier, the Supplier shall NSG with a credit equivalent to its standard delivery cost from time to time, applicable as at and confirmed in advance of the same.
- 2.3 The Hire Rate shall be paid for the Hire Period and will include at no additional cost, any and all time which is properly and unavoidably occupied in transporting the Equipment causing the Hire Period to be extended.
- 2.4 Should NSG require the Equipment beyond the Hire Period, it shall notify the Supplier in writing and the Supplier shall offer the Equipment at the same Hire Rate as offered prior to the extension.

3 Unloading and Loading

The Supplier shall be responsible for the unloading and loading of the Equipment at the Site and shall remain responsible for the actions and omissions of any Supplied Personnel provided by the Supplier, notwithstanding that they may be acting under the direction of NSG.

4 Inspection and Maintenance

- 4.1 Nothing contained in these Terms shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Purchase Order.
- 4.2 The Supplier shall permit NSG (and its (and its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) to make any inspections or tests it may reasonably require in relation to the Equipment shall afford all reasonable facilities and assistance free of charge at such suitable location. The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of NSG) to comply with this Agreement. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by NSG of any rights or remedies in respect of the Equipment.

- 4.3 Risk in the Equipment shall transfer to NSG upon completion of any inspections or the commencement of its use within the Hire Period.
- 4.4 Save where it is agreed between the parties that the foregoing shall be carried out by NSG (or its clients, the ultimate beneficiaries of the Supply and any of its or their representatives), the Supplier shall be responsible for the conduct and cost of any testing, inspections, examinations and/or other checks to be carried out in respect of the Equipment as required by legislation, best practice and/or operating instructions. Any inspection report required under Applicable Laws, or a copy thereof, shall be supplied by the Supplier, if requested by NSG, and returned on completion of the Hire Period.

5 Ground and Site Conditions

- 5.1 The Supplier is deemed to have knowledge of the Site and the Supplier warrants that the condition of the Site is suitable for the use of such Equipment.
- 5.2 If, in the opinion of the Supplier, the ground of the Site (including any private access road or track) is soft or otherwise unsuitable for the Equipment to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Supplier shall at no additional charge supply and lay suitable timbers or equivalent support (**Support**) in a suitable position for the Equipment to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.
- 5.3 Any Support supplied by NSG is provided solely to assist the Supplier under their duties within this paragraph and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Equipment.
- 5.4 The Supplier is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site in the course of the delivery and collection of the Equipment and the Supplier shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

6 Supplied Personnel

- 6.1 When the Equipment is accompanied by Supplied Personnel, the Supplier warrants that such Supplied Personnel are competent in operating the Equipment or for such purpose for which they are supplied and such Supplied Personnel shall be under the direction and control of NSG.
- 6.2 Supplied Personnel shall not be required to operate anything other than the Equipment for which they are supplied as set out in the Purchase Order unless previously agreed in writing between the parties.

7 Breakdown, Repairs and Adjustment

- 7.1 Charges will not be charged to NSG for any stoppage due to breakdown of the Equipment caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs. In the event that the Equipment becomes temporarily unusable or unavailable in accordance with this paragraph, the Supplier shall make available replacement Equipment (not necessarily of the same type and age) for collection by NSG within twenty-four (24) hours (or as soon after that as is practicable) after the receipt of notification from NSG requesting replacement Equipment.
- 7.2 The Supplier shall be responsible for all Loss involved arising from any breakdown, unsatisfactory working of or damage to any part of the Equipment save to the extent that such issue is proven to be wholly attributable to the acts or omissions of NSG.
- 7.3 If during the Hire Period NSG decides that urgent repairs to the Equipment are necessary, then it may arrange for such repairs to be carried out on Site or at any location of its nomination.

8 Invoicing

Unless otherwise agreed between the parties, the Supplier may raise its invoice(s) for the hire of the Equipment at any time following the end of the Hire Period.