

# N8 EQUIPMENT ACCESS AGREEMENT TERMS AND CONDITIONS

## 1. DEFINITIONS AND INTERPRETATION

In these terms and conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

**"Acceptance"** has the meaning ascribed to it in Condition 10.3 of these Conditions;

**"Access"** means the right of the Customer to access and use the Equipment during the Access Period on the terms of this Contract;

**"Access Fee"** means the amount specified in the Order to be paid by the Customer to the Supplier for the Access;

**"Access Period"** means the period specified in the Order during which the Customer shall have Access to the Equipment;

**"Commencement Date"** means the date on which the Access Period is deemed to commence in accordance with Condition 4.1 of these Conditions;

**"Conditions"** means these terms and conditions of Access;

**"Contract"** means the contract for Access to use the Equipment comprising the Order made by or on behalf of the Customer with the Supplier pursuant to these Conditions;

**"Customer"** means the person having Access to the Equipment under the terms of the Contract;

**"Customer's Site"** means the site where the Equipment is to be located and used by the Customer during the Access Period as specified in the Order;

**"Deposit"** means the deposit (if any) payable by the Customer to the Supplier as specified in the Order;

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any central government body in relation to such regulations;

**"Equipment"** means the plant, equipment or other goods described in the Order;

**"Equipment Location"** means the Supplier's site where the Equipment is located and from which the Equipment should be collected and returned (unless otherwise agreed between the parties);

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

**"Force Majeure Event"** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;

**"Health and Safety Laws"** means all or any applicable directives or regulations, statutes or subordinate legislation, civil or common law, all orders, judgments, notices, ordinances, decrees or regulatory codes of practice, circulars, guidance notes and equivalent controls which relate to the health and safety of any person;

**"Instructions"** has the meaning ascribed to it in Condition 10.5.1 of these Conditions;

**"Order"** means the Customer's order for Access to the Equipment as set out in the order form overleaf;

**"Personnel"** means any person who enters the Equipment Location to Access the Equipment on behalf of the Customer (whether or not in its employment) including its employees, students, agents, consultants or subcontractors;

**"Replacement Value"** means the full replacement value of the Equipment as specified in the Order, or if no value is specified, the full replacement value of the Equipment as is reasonable in all the circumstances;

**"Start Date"** means the intended start date of the Access Period as specified in the Order;

**"Supplier"** has the meaning given to it in the Order;

**"Termination Notice Period"** means the minimum notice period required in order to terminate this Contract for convenience in accordance with Condition 14.1, as specified in the Order;

**"Working Day"** means any day from Monday to Friday on which banks are open for business in England.

## **2. GENERAL**

- 2.1 The following Conditions shall apply to this Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 Any variation from these Conditions will only be accepted if agreed to and confirmed in writing by the Supplier.
- 2.3 These Conditions, together with the documents referred to in them, constitute the entire agreement between the Customer and the Supplier and shall take effect notwithstanding anything contained in any correspondence with the Customer.
- 2.4 The Order constitutes a request by the Customer to access and use the Equipment in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant specification are complete and accurate.
- 2.5 This Contract will only come into being upon the date both the Supplier and the Customer have signed the Order.
- 2.6 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If a Force Majeure Event prevents the Supplier from providing the Equipment for more than 24 hours, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## **3. ACCESS**

- 3.1 In consideration of the Access Fee payable to the Supplier, the Supplier shall arrange for, and grant to, the Customer Access to the Equipment during the Access Period.

## **4. ACCESS PERIOD**

- 4.1 The Access Period shall commence on the earlier of:
  - 4.1.1 the time that the Equipment is removed from the Equipment Location in accordance with Condition 8.2;
  - 4.1.2 the time at which the Customer is granted Access by the Supplier to use the Equipment at the Equipment Location in accordance with Condition 8.3; or
  - 4.1.3 the Start Date specified in the Order.
- 4.2 The Access Period shall commence on the Commencement Date and continue for the duration of the Access Period as specified in the Order (subject to any adjustments to that period in accordance with the terms of these Conditions).
- 4.3 The Access Period may only be amended by the written agreement of both Parties.

## **5. ACCESS FEE**

- 5.1 The Customer shall be liable to pay the Access Fee to the Supplier in respect of the Access Period.
- 5.2 The relevant Access Fee is set out in the Order. The Access Fee is for the duration of this Contract and includes Saturdays, Sundays and public holidays.
- 5.3 Where the Equipment is to be removed from the Equipment Location, the Customer shall be responsible for all costs of carriage connected with the collection and/or delivery of the Equipment. In the event that the Supplier delivers the Equipment to the Customer, all attempted deliveries by the Supplier shall be chargeable. In the event that the Supplier collects the Equipment from the Customer and the Equipment is not ready for collection or only partially ready, then the Customer will be charged for each journey made by the Supplier.
- 5.4 If the Equipment is defective or faulty such that the Equipment cannot be used by the Customer for a period of more than 24 hours during the Access Period then, provided that such defect or fault was not caused by an act or omission of the Customer (including any breach of its obligations set out in Condition 10 below), the

Supplier shall reimburse to the Customer a proportion of the Access Fee in respect of the period during which the Equipment could not be used (calculated on a pro rata basis).

## **6. DEPOSIT**

- 6.1 The Customer shall, before the Commencement Date, pay the Deposit (if any) to the Supplier.
- 6.2 The Deposit is a deposit against default by the Customer of payment of the Access Fee or any loss of, or damage caused to, the Equipment.
- 6.3 If the Customer fails to pay the Access Fee in accordance with Condition 6 below, or causes any loss or damage to the Equipment (in whole or in part), the Supplier shall be entitled to apply the Deposit against such default, loss or damage.
- 6.4 The Supplier shall refund the Deposit (less any deductions made in accordance with Condition 6.3) to the Customer within five (5) Working Days of the end of the Access Period.

## **7. PAYMENT**

- 7.1 The Supplier shall invoice the Customer for the Access Fee and any applicable delivery and collection costs and the Customer shall pay the invoice in full and in cleared funds within 28 days of receipt. Where the Access Fee is to be calculated on the basis of a fee rate (e.g. a daily or weekly rate), unless otherwise agreed in the Order, the Supplier shall invoice the Customer for the Access Fee in arrears on a monthly basis.
- 7.2 Payment shall be made to the bank account nominated in writing by the Supplier as set out in the Order.
- 7.3 The Customer shall pay all amounts due under this Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.4 The Access Fee is exclusive of amounts in respect of value added tax ("**VAT**"), which may be chargeable. If VAT becomes chargeable, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Equipment.
- 7.5 If the Customer fails to make any payment due to the Supplier under this Contract by the due date for payment, then the Customer shall pay interest at the overdue amount at the rate of four per cent above the then current published Bank of England base rate and the Supplier may suspend further services to the Customer.

## **8. COLLECTION AND RISK**

- 8.1 The Supplier will use all reasonable endeavours to abide by quoted dates for commencing Access to the Equipment, but time for commencing Access shall not be of the essence. Where the start of the Access Period is delayed due to an act of omission of the Supplier, the Supplier shall adjust the Access Fee in respect of the period of such delay, but only to the extent that the delay reduces the Customer's actual intended use of the Equipment during the Access Period (to be calculated on a pro rata basis).
- 8.2 Where the Equipment is to be removed from the Equipment Location:
  - 8.2.1 the Customer shall be responsible for making suitable arrangements for the Equipment to be collected from and returned to the Equipment Location unless otherwise agreed between the parties;
  - 8.2.2 the Equipment shall be collected from and returned to the Equipment Location between 9.30am and 3.30pm, Monday to Friday (excluding public holidays) unless otherwise agreed between the parties;
  - 8.2.3 on return of the Equipment to the Equipment Location, the Customer shall obtain from the Supplier a written acknowledgment that the Equipment has been returned and that Access has ceased;
  - 8.2.4 where the Equipment is to be collected by (or on behalf of) the Customer from the Equipment Location, risk of damage to the Equipment shall pass to the Customer from the time at which it is placed under the control of the Customer (or its nominated courier) at the Equipment Location and shall remain with the Customer until such time as a written acknowledgement is issued by the Supplier that Access has ceased in accordance with Condition 8.2.3;

- 8.2.5 in the event that the Supplier delivers the Equipment to the Customer, risk of damage to the Equipment shall pass to the Customer at the point at which the Equipment is placed under the control of the Customer at the delivery location; and
  - 8.2.6 the Customer shall permit the Supplier or its duly authorised representatives to inspect the Equipment at all reasonable times and for such purpose to enter upon the premises at which the Equipment is located, and shall grant reasonable access and facilities for such inspection.
- 8.3 Where the Customer is to be granted Access to use the Equipment at the Equipment Location:
- 8.3.1 risk of damage to the Equipment shall, subject to Condition 9, remain with the Supplier; and
  - 8.3.2 on completion of the Customer's use of the Equipment, the Customer shall obtain from the Supplier a written acknowledgment that Access has ceased.

## **9. USE AT THE SUPPLIER'S SITE**

- 9.1 Where the Customer is granted Access to use the Equipment at the Equipment Location, the following terms shall apply:
- 9.1.1 the Customer shall comply with all Health and Safety Laws and all site regulations and other policies of the Supplier that are communicated to the Customer and may apply to the Personnel during the Access Period;
  - 9.1.2 the Customer shall promptly notify the Supplier of any health and safety hazards, which may arise in connection with its use of the Equipment and shall notify the Supplier immediately in the event of any incident occurring on the Supplier's premises which could result in injury to Personnel (or to any other persons at the Equipment Location) or damage to the Equipment (or any other property belonging to the Supplier);
  - 9.1.3 the Supplier reserves the right to suspend the Customer's Access to the Equipment if, in the Supplier's reasonable opinion, there is any risk of harm to Personnel (or to any other persons at the Equipment Location) or to the Equipment (or any other property belonging to the Supplier) resulting from the Customer's continued Access to the Equipment at the Equipment Location, and the neither the Supplier nor the Supplier shall incur any liability under this Contract as a result of such suspension; and
  - 9.1.4 the Customer shall indemnify and hold harmless the Supplier and any persons at the Equipment Location against all losses or damage, costs, charges or losses sustained or incurred by the Supplier arising directly from a breach of Conditions 9.1.1 and 9.1.2 where such breach is caused by the Customer's negligence.

## **10. CUSTOMER'S OBLIGATIONS DURING THE ACCESS PERIOD**

- 10.1 **Identification:** The Customer shall preserve the Supplier's or the manufacturer's identification number or marks on any nameplate on the Equipment and shall ensure that at all times the Equipment remains identifiable as being the Supplier's property.
- 10.2 **Equipment Destination:** Where the Equipment is to be removed from the Equipment Location, the Customer shall only use the Equipment at the Customer's Site and shall not remove it from that address without first notifying the Supplier in writing of the proposed new address and receiving the Supplier's written agreement to that request. The Customer must not allow Equipment to be moved outside of the United Kingdom.
- 10.3 **Acceptance of Equipment:** The Customer shall notify the Supplier in writing within 48 hours of the Equipment being collected from the Equipment Location if the Equipment is in a damaged or unserviceable condition. In the absence of such notification, the Equipment will be deemed to have been accepted by the Customer as being in good operating condition at the point of collection ("**Acceptance**").
- 10.4 **Licences and Consents:** The Supplier shall procure that the Customer has the benefit of all licences and consents necessary to allow the Customer to use the Equipment, provided that the Customer shall be solely responsible for obtaining all necessary permits and consents that relate specifically to the use of the Equipment at the Customer's Site or to any other matter specific to the Customer's use of the Equipment of which the Supplier would not reasonably be aware.
- 10.5 **Use of the Equipment:** The Customer shall:

- 10.5.1 only use the Equipment in accordance with the manufacturer's instructions and/or the written or practical instructions provided to the Customer by the Supplier or Supplier ("**Instructions**");
  - 10.5.2 ensure that the Equipment is only used by appropriately trained and suitably qualified staff;
  - 10.5.3 not interfere with, modify or change the Equipment in any way other than normal operational usage without the prior written consent of the Supplier;
  - 10.5.4 keep the Equipment in good condition and not subject it to misuse (normal wear and tear excepted);
  - 10.5.5 refer to the Supplier immediately in the event of there being any doubt relating to the correct use of the Equipment;
  - 10.5.6 keep and operate the Equipment in a suitable environment; and
  - 10.5.7 ensure that the Equipment is not used for any unlawful purpose.
- 10.6 **Routine Maintenance:** The Customer shall be responsible for routine maintenance of the Equipment in accordance with the Instructions during the Access Period to ensure effective and efficient operation. Where third-party maintenance is required (e.g. under an existing maintenance contract) the Supplier and the Customer shall make arrangements for the maintenance to be carried out at a mutually convenient time (at the Supplier's cost) and the Customer shall provide such assistance and access to the Equipment as is reasonably necessary in order to allow such maintenance to be performed. Where the Equipment requires fuel, oil and/or electricity, the Customer must ensure that the Supplier's or the manufacturer's recommended type and/or voltage is used and that, where appropriate the Equipment is properly installed by a qualified person. For the avoidance of doubt, unless otherwise agreed in writing:
- 10.6.1 where the Equipment is not used at the Equipment Location, the routine running costs for operating the Equipment during the Access Period (for example fuel, oil and/or electricity) shall be payable by the Customer; but
  - 10.6.2 where the Equipment is used at the Equipment Location, such costs shall be included within the Access Fee.
- 10.7 **Faults:** In the event of any Equipment becoming faulty the Customer shall notify the Supplier of the fault, and at the same time request instructions as to how to correct the fault before taking any action or returning the Equipment to the Supplier (at the Supplier's discretion). Unless otherwise agreed in writing, and provided that the fault was not caused by an act or omission of the Customer (including any breach of its obligations set out in this Condition 10), the Supplier shall be liable for the cost of repairing the fault.
- 10.8 **Damage:** The Customer shall immediately notify the Supplier in writing of any loss or damage to the Equipment or other material matters relating to the Equipment occurring after Acceptance and shall not attempt any repair without the prior consent of the Supplier. In the event that the Equipment needs repair or re-calibration as a result of the Customer's negligence and/or a breach of Condition 10.5:
- 10.8.1 the Customer shall be responsible for the entire cost of any repair and/or re-calibration, including all related delivery charges; and
  - 10.8.2 if such repair and/or re-calibration is not completed within the specified Access Period, the Access Period shall be deemed to continue and the Customer will remain liable to pay the Access Fee in respect of such extended Access Period until the Equipment is fully repaired and/or re-calibrated to the Supplier's reasonable satisfaction.
- 10.9 **Restoration of Settings:** Prior to returning the Equipment, the Customer shall restore all settings, clean, decontaminate and return the Equipment in good and safe condition (fair wear and tear excepted) and free of any virus or malware.
- 10.10 **Unreturned Items:** If any material items and/or accessories related to the Equipment are not returned to the Supplier (including but not limited to instruction manuals) at the end of the agreed Access Period, the Customer will be charged for the full replacement costs of such items and/or accessories, plus any applicable Access Fee in respect of the period during which the relevant items were not returned or replaced.
- 10.11 **Safety:** The Customer agrees and undertakes that:
- 10.11.1 it is responsible for taking all reasonable steps to ensure the safe and correct use and maintenance of the Equipment (conforming to relevant legislation including but not limited to Health and Safety Laws) by competent persons not under the influence of alcohol or drugs and, where relevant, for its constant supervision within the range of children; and

10.11.2 it shall ensure that any equipment used in conjunction with or attached to the Equipment also conforms to all applicable safety requirements from time to time.

## **11. OWNERSHIP**

- 11.1 The Customer acknowledges that the Equipment is owned by the Supplier and that the Equipment shall remain the sole property of the Supplier at all times and is made available for Access by the Supplier and the Customers of the Supplier on a temporary basis only.
- 11.2 The Customer shall not install the Equipment as a fixture to any land or building.
- 11.3 The Customer shall not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier to the Equipment or which is otherwise inconsistent with the Supplier's unencumbered ownership of the Equipment (including without limitation the exercise of any lien or creation of any mortgage, charge, or other security interest in respect of it).
- 11.4 The Customer shall not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.

## **12. SUPPLIER'S OBLIGATIONS**

- 12.1 The Supplier shall, at the Supplier's cost:
- 12.1.1 provide appropriate written and/or practical instructions relating to the operation of the Equipment, which the Customer shall follow during the Access Period; and
- 12.1.2 use reasonable endeavours to repair or replace Equipment which becomes defective during the Access Period through no fault of the Customer.

## **13. INDEMNITY AND LIABILITY**

- 13.1 Nothing in these Conditions shall limit or exclude the Customer's or the Supplier's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, or
- 13.1.2 fraud or fraudulent misrepresentation.
- 13.2 Neither party, shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract or use of the Equipment for any indirect or consequential loss arising under or in connection with this Contract. For the avoidance of doubt, nothing in this Condition 13.2 is intended to exclude an insurer's right of subrogation.
- 13.3 The total aggregate liability of each party ("**Defaulting Party**") to the other party in respect of all losses arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the greater of:
- 13.3.1 the Replacement Value of the Equipment; or
- 13.3.2 the total Access Fee paid or payable by the Customer to the Supplier under this Contract.
- 13.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- 13.5 This Condition 13 shall survive the termination of this Contract.

## **14. TERMINATION**

- 14.1 Where agreed as part of the Order, either party may terminate the whole or any part of this Contract at any time for convenience, on provision of written notice of no less than the Termination Notice Period to the other party.
- 14.2 Either party may terminate this Contract at any time by written notice to the other party if the Equipment is defective or faulty such that the Equipment cannot be used by the Customer during the Access Period for a consecutive period that exceeds that the shorter of: (i) two weeks; (ii) one quarter of the agreed Access Period; or (iii) such other period as may be agreed in writing in the Order (save that the Customer shall not be

entitled to terminate this Contract in accordance with this Condition 14.1 where such defect or fault is caused by a breach of its obligations set out in Condition 10 above).

- 14.3 Either party may terminate the whole or any part of this Contract (including any or all other Contracts between the Supplier and the Customer for Access to Equipment) at any time by written notice, effective immediately, to the other party ("**Defaulting Party**") if:
- 14.3.1 the Defaulting Party breaches any material obligation under a Contract which, if capable of remedy, is not remedied by the Defaulting Party within 14 days of it receiving a request to do so from the other party (that is to say, the "**Terminating Party**"); or
  - 14.3.2 the Defaulting Party is acquired by or merges with any third party; or
  - 14.3.3 a meeting is convened, a petition presented, an order made, an effective resolution passed, or notice is given for the Defaulting Party's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or
  - 14.3.4 an application is made for, or any meeting of the Defaulting Party's directors or Customers resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed; or
  - 14.3.5 an incumbrancer takes possession, or a receiver or manager or administrative receiver is appointed, of the whole or any part of the Defaulting Party's assets; or
  - 14.3.6 the Defaulting Party ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or
  - 14.3.7 a proposal is made for a composition in satisfaction of the Defaulting Party's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986.

## **15. CONSEQUENCES OF TERMINATION**

- 15.1 If the Contract is terminated due to the circumstances outlined in Conditions 14.3.3 to 14.3.7 then the Terminating Party shall have the right to set-off against any sums or amounts due or owed by the Terminating Party to the Defaulting Party any sums or amounts or claims, whether liquidated or unliquidated, owing by the Defaulting Party to the Terminating Party. In the event that the process of set-off produces a balance in favour of the Defaulting Party, the payment by the Terminating Party of that balance shall operate to provide the Terminating Party for all purposes with a full and complete discharge of all obligations owed by the Terminating Party to the Defaulting Party .
- 15.2 On termination of this Contract, the Customer shall return the Equipment (at the Customer's cost) to the Supplier as soon as reasonably possible (and in any event within two Working Days) in accordance with the terms of this Contract.
- 15.3 If the Supplier terminates this Contract due to any of the circumstances outlined in Condition 14.3 and/or the Customer fails to return the Equipment in accordance with Condition 15.2, the Supplier shall have the right to immediately repossess the Equipment and the Customer hereby grants to the Supplier (and, where necessary, their nominated agents) a licence to enter the Customer's premises for this purpose.

## **16. CONFIDENTIALITY**

The Supplier and the Customer (as appropriate) shall keep confidential and shall not disclose to any third party: (i) the Customer's use of the Equipment; (ii) any information of a confidential nature that is disclosed to it by the other party in connection with the Customer's use of the Equipment (including, where relevant, any data or information belonging any third party that may be stored in the Equipment and accessible to the Customer during the Access Period); or (iii) any information of a confidential nature related to the Supplier or the Customer that is otherwise disclosed to a party as a result of their use of the Equipment or access to the other party's premises, provided that this Condition shall not prevent either party from making any disclosure that it is reasonably required to make in order to comply with any applicable laws, regulations or court orders to which that party is subject. This Condition 16 shall survive termination of this Contract.

## **17. ASSIGNMENT**

- 17.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Contract and may subcontract or delegate in any manner any or all of its obligations under this Contract to any third party or agent.
- 17.2 The Customer shall not assign, sell, transfer or part with possession, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written permission of the Supplier.

## **18. NOTICES**

- 18.1 Except where expressly stated in this Contract, a notice in respect of this Contract shall only be effective if it is in writing.
- 18.2 Notices in respect of this Contract shall be sent to a party at its address or number and for the attention of the individual specified in these Conditions or the Order, provided that a party may change its notice details of giving notice to the other party of the change in accordance with this Condition.

## **19. DISPUTE RESOLUTION**

- 19.1 The parties agree to co-operate with each other in an amicable manner with a view to achieving the successful resolutions of any disagreements or disputes arising in connection with this Contract or the Customer's use of the Equipment.
- 19.2 If the parties fail to agree on any matter relating to this Contract or the Customer's use of the Equipment, or if there is any difference or dispute between the parties arising in relation to any such matter (in each case a "**Dispute**"), any party may refer the Dispute for resolution in accordance with the following steps:
- 19.2.1 in the first instance, the Dispute shall be referred to and discussed by the their named representative as set out in the Order;
- 19.2.2 if the representatives are unable to resolve the Dispute within 10 Working Days of the Dispute being referred to them, the Dispute shall be referred to the Chief Financial Officer of each of the parties; and
- 19.2.3 if the Chief Financial Officers are unable to resolve the Dispute within 10 Working Days of the Dispute being referred to them, and the parties have not agreed alternative means of resolution within five further Working Days any party may seek to resolve the Dispute through the courts.

## **20. FREEDOM OF INFORMATION**

The Parties acknowledge they may be subject to the requirements of the FOIA and the Environmental Information Regulations and the Parties shall facilitate each other's compliance with its Information disclosure requirements pursuant to the same and shall assist each other with their FOIA in connection to this Contract.

## **21. THIRD PARTY RIGHTS**

A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **22. ENTIRE AGREEMENT**

- 22.1 These Conditions and any documents referred to in them, including without limitation, the Order, constitute the whole and only agreement between the parties relating to the subject matter of this Contract.
- 22.2 The Customer acknowledges that in entering into this Contract it is not relying on any pre-contractual statement which is not set out in this Contract.
- 22.3 Except in the case of fraud, no party shall have any right of action against any other party to this Contract arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Contract or Order.
- 22.4 For the purposes of this Condition, "pre-contractual statement" means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in



writing, relating to the subject matter of this Contract made or given by any person at any time prior to the date of this Contract.

**23. NO WAIVER**

The rights of the Supplier and the Customer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach. Any variation in the terms of this Contract must be agreed between the parties in writing.

**24. SEVERABILITY**

In the event that, for any reason, any provision in this Contract is held to be void, unenforceable or otherwise invalid, all the other provisions of this Contract, and the remainder of any provision where the effect of some part of it is held to be void, unenforceable or otherwise invalid, shall remain in full force.

**25. GOVERNING LAW**

This Contract, 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, English law, and the Supplier and the Customer irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.