

PARTIES:

- (1) ****The Client****
- (2) **The PCS Group Ltd** a company incorporated in England and Wales under number 02127550 whose registered office is at 3a Horseshoe Close, Oxgate Lane, London, NW2 7JJ (**Supplier**)

(each of the Supplier and the Customer being a party and together the Supplier and the Customer are the parties).

RECITALS:

- (A) The Supplier conducts the business of supplying cleaning/security services and the Customer wishes to outsource the provision of such Services to the Supplier.
- (B) The parties have agreed that the Supplier shall supply the Services to the Customer on the terms set out in this Agreement.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Affiliate" means any entity that directly or indirectly **Controls**, is **Controlled** by, or is under common **Control** with, another entity;

"Business Day" means a day other than a Saturday, Sunday or bank or public holiday in England;

"Applicable Laws" means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the performance of the Services;

"Business Hours" means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday.

"Commencement Date" means the date of this Agreement;

"Confidential Information" means means any information, however conveyed or presented, that relates to the customers (and their personal data), business, affairs, operations, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, personnel, , together with all information derived by the receiving party from such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential;

"Control" has the meaning given in the Corporation Tax Act 2010, s 1124 and **Controls** and **Controlled** shall be interpreted accordingly;

“ServiceTimes” means the times set out in Schedule 3 in respect of the Offices or as otherwise agreed by the parties in writing.

“Employee” means any person who immediately prior to the Commencement Date was an employee of The PCS Group Ltd and assigned to the Services;

“Employment Costs” means all costs associated with the employment of the Supplier Personnel including all taxes, national insurance, pension contributions and other costs related to the same;

“Employee Liabilities” means all liabilities, including but not limited to claims for redundancy payments, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for age, sex, race or disability discrimination or discrimination on the grounds of religion, belief, age or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any other claims whether in tort (including negligence), contract or statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis;

"Force Majeure" means any event or sequence of events beyond a party's reasonable control such as an 'act of God' including, but not limited to, fire, flood, drought, earthquake, windstorm or other natural disaster; act of any sovereign including war, invasion, act of foreign enemies, acts of terrorism; radioactive contamination; law, judgment, order, decree, embargo, blockade, labour dispute including strike, lockout or boycott; interruption or failure of utility service including to electric power, gas, water or telephone service. For the avoidance of doubt inability to pay is not Force Majeure;

"Good Industry Practice" means the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances;

"Offices" means the Customer's offices as set out in **Error! Reference source not found.** to which the Supplier shall supply or procure the supply of, the Services;

"Price" means the price of any of the Services determined under clause 5;

“Replacement Supplier” means any third party supplier providing services to the Customer (or any of the Customer's Affiliates) which are identical or substantially similar to any of the Services and which the Customer (or any of the Customer's Affiliates) receives in substitution for any of the Services following termination of this Agreement;

"Services" means the provision of (cleaning/security) services (Monday to Saturday) at the Offices set out in **Error! Reference source not found.**;

“**Supplier Personnel**” means all employees, officers, staff, other workers, agents, and consultants of the Supplier who are engaged in the performance of the Services from time to time;

“**Sub-contractor**” means those persons with whom the Supplier enters into a Sub-contract or its or their employees, officers, Sub-contractors or agents;

“**Term**” has the meaning given in clause 2.1;

“**TUPE Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time).

1.2 In this Agreement:

- (a) a reference to this Agreement includes its schedules, appendices and annexes (if any);
- (b) a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;
- (c) a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- (d) a reference to a gender includes each other gender;
- (e) words in the singular include the plural and vice versa;
- (f) any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- (g) the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement; and
- (h) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement.

2. SUPPLY OF SERVICES

2.1 This Agreement commences on the Commencement Date and shall continue for a period of 36 months when it shall automatically renew each year thereafter on a rolling basis unless terminated earlier under clause 3.8 or under clause 10 or clause 14.2 or clause 18.2 (the **Term**).

2.2 During the Term, the Supplier agrees to supply, and the Customer agrees to purchase, the Services on the terms set out in this Agreement.

3. PERFORMANCE OF THE SERVICES

- 3.1 The Services shall be performed by the Supplier during the agreed Service Times at the Offices of the customer.
- 3.2 The Customer shall make such Offices available as reasonably required by the Supplier in writing so that the Supplier is able to perform the Services throughout the Term.
- 3.3 The Customer shall so far as reasonably practicable ensure that the Offices are safe for the Supplier and the Supplier Personnel to perform the Services.
- 3.4 The Supplier shall provide the materials required by the Supplier for performing the Services.
- 3.5 The Customer shall provide the Supplier and its Supplier Personnel with:
- (a) all necessary light, hot water and other facilities distinct from materials required by the Supplier to perform the Services; and
 - (b) suitable and safe accommodation for storage of equipment and materials as the Supplier reasonably deems necessary to store at the Offices.
- 3.6 The Supplier shall not be liable for any delay in or failure to perform the Services to the extent it is caused by:
- (a) the Customer's failure to: (i) make the Offices available or accessible (ii) prepare the Offices in accordance with the Supplier's instructions or (iii) provide the Supplier with adequate instructions or information as requested by the Supplier in writing from time to time; or
 - (b) an event of Force Majeure.
- 3.7 If the Customer fails to make the Offices available or accessible for the Supplier or such Supplier Personnel to provide the Services under 3.6(a)(i) the Supplier shall give written notice of such occurrence to the Customer within 24 hours and the Services shall be deemed to have been performed by the Supplier and chargeable in full.
- 3.8 If the Customer is dissatisfied with the performance of the Services by the Supplier or its Supplier Personnel, the Customer shall give written notice of such dissatisfaction and identifying in sufficient detail the nature and extent of the defects within 2 Business Days of such occurrence, upon receipt of which the Supplier shall take all necessary steps to investigate and rectify the issue at its own cost.
- 3.9 If the Customer's dissatisfaction with the Service continues the Customer shall give written notice of such dissatisfaction in accordance with 3.8 at least three times so as to give the Supplier ample opportunity to improve the Service before such dissatisfaction would form a material breach under clause 10.2(a) of this Agreement and following which, the Customer may:

- (a) refuse to accept any subsequent attempts to supply the Services and terminate this Agreement immediately by serving notice in writing on the Supplier to this effect;
- (b) procure similar Services from an alternative supplier; and
- (c) recover from the Supplier all losses, damages, costs and expenses incurred by the Customer arising from the Supplier's default.

4. WARRANTY

4.1 The Supplier represents and warrants that the Services performed by the Supplier shall:

- (a) conform in all material respects to their description set out in this Agreement; and
- (b) be performed and supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, s 13.

4.2 Without limiting any other remedies to which it may be entitled, the Customer may reject any Services that do not comply with clause 4.1, and provided the Customer has given notice in accordance with clause 3.8 above, the Supplier shall, at the Customer's option, promptly remedy, re-perform or refund the Price of any such Services.

4.3 The Supplier shall comply with all Applicable Laws, standards and Good Industry Practice in the supply and performance of the Services.

4.4 The Customer's rights under this Agreement are in addition to, and do not exclude or modify, the rights and conditions contained in sections 12 to 16 of the Supply of Goods and Services Act 1982.

5. PRICE

5.1 The Prices payable by the Customer in respect of the Services are contained in Schedule 2.

5.2 The Prices are exclusive of VAT.

5.3 The Prices will be subject to an annual increase of 2% which will be applied on the anniversary of the Commencement Date of the Agreement. If the Supplier believes that, in the next 12 months to the following anniversary, there will be material increases in the cost of supplying the Services which are caused by statute or governmental regulation, the Supplier shall be entitled to propose an increase in the prices for the Services over the 2% annual increase. The Customer shall be entitled to see the Supplier's information concerning the cost of the additional costs and subject to being satisfied that such costs are necessary and not reasonably capable of being mitigated, shall increase the price payable to the Supplier in respect of such costs but on a cost price, zero margin basis. For the purposes of calculating the increased statutory costs, the first two percent (2%) of any increase applicable

through the year in the National Minimum Wage or the National Living Wage shall be disregarded (by comparing such figures at the relevant anniversary with the equivalent figures for the previous anniversary).

5.4 The Supplier shall at the Customer's request provide such additional items including but not limited to soap, toilet rolls, paper towels, and black bin bags and the price of such additional items shall be agreed between the parties upon request.

6. PAYMENT

6.1 The Supplier shall issue invoices for the Services on the 15th day of each calendar month.

6.2 The Customer shall pay all undisputed invoices:

- (a) in full in cleared funds within 30 days of receipt of each invoice; and
- (b) to the bank account nominated by the Supplier.

6.3 The Customer shall pay any applicable VAT to the Supplier within 14 days after receipt of a valid VAT invoice.

6.4 Time of payment is not of the essence. Where sums due hereunder are not paid in full by the due date:

- (a) the Supplier may, without limiting its other rights, charge interest on such sums at 3% a year above the base rate of Barclays Bank Plc from time to time in force; and
- (b) interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

7. LIMITATION OF LIABILITY

7.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 7.

7.2 Subject to clauses 7.4 and 7.5 the total liability of the Supplier howsoever arising under or in connection with this Agreement shall not exceed the sum of £5,000,000;

7.3 Subject to clauses 7.4 and 7.5, neither party shall be liable for consequential, indirect or special losses.

7.4 The limitations of liability set out in clauses 7.2 and 7.3 shall not apply in respect of any indemnities given by either party under this Agreement.

7.5 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:

- (a) death or personal injury caused by negligence;

- (b) fraud or fraudulent misrepresentation;
- (c) any other losses which cannot be excluded or limited by applicable law;
- (d) any losses caused by wilful misconduct.

8. INSURANCE

- 8.1 The Supplier shall put in place and maintain in force at its own cost suitable insurance cover including but not limited to public and products liability insurance, professional indemnity and employers liability insurance with a reputable insurer to cover its relevant potential liabilities in connection with this Agreement for the Term.
- 8.2 On each policy renewal (including where any modifications are made to any policy) and otherwise at the Customer's request, the Supplier shall provide the Customer with details of the insurance including the risks covered, indemnity limits and premiums paid and copies of the certificates of insurance.
- 8.3 The Supplier undertakes that it shall not do or omit to do anything which might invalidate or adversely affect the insurance that the Supplier is obliged to maintain under clause 8.1.
- 8.4 The Supplier shall notify the Customer immediately if anything occurs which has invalidated, or is likely to invalidate, the insurance held by the Supplier.

9. INDEMNITY

- 9.1 The Supplier shall indemnify the Customer for any losses, damages, liability, costs and expenses (including professional fees) incurred by it as a result of any action, demand or claim:
- (a) that the Customer is in breach of any Applicable Laws as a result of any act or omission of the Supplier;
 - (b) made against the Customer by a third party arising from any defect in the Services caused by the Supplier's breach of this Agreement.

10. TERMINATION

- 10.1 Unless otherwise stated, this Agreement may be terminated at any time by the Customer giving not less than 3 months' notice in writing to the Supplier.
- 10.2 Either party may terminate this Agreement at any time by giving notice in writing to the other party if:
- (a) the other party commits a material breach of this Agreement and such breach is not remediable;
 - (b) the other party commits a material breach of this Agreement which is not remedied within 14 days of receiving written notice of such breach;

- (c) any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled.
- 10.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:
 - (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
 - (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - (e) has a resolution passed for its winding up;
 - (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
 - (h) has a freezing order made against it;
 - (i) is subject to any events or circumstances analogous to those in clauses 10.3 (a) to 10.3 (i) in any jurisdiction;
- 10.4 The right of a party to terminate the Agreement pursuant to clause 10.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 10.5 The Customer may terminate this Agreement at any time by giving not less than 3 months notice in writing to the Supplier if the Supplier undergoes a change of Control.
- 10.6 On termination of this Agreement for any reason:
 - (a) the Supplier shall promptly invoice the Customer for all Services performed but not yet invoiced;
 - (b) the parties shall within 5 Business Days return any materials of the other party then in its possession or control; and
 - (c) the accrued rights and liabilities of the parties (including any rights in relation to breaches of contract) shall not be affected.
- 10.7 The following clauses of this Agreement shall survive termination, howsoever caused:
 - (a) clause 4 (warranty);

- (b) clause 7 (limitation of liability);
- (c) clause 8 (insurance);
- (d) clause 9 (indemnity);
- (e) clause 10.6 (consequence of termination);
- (f) clause 13 (confidential information);
- (g) clause 15 (dispute resolution);
- (h) clause 17 (notices);
- (i) clause 29 (third party rights); and
- (j) clauses 30 and 31 (governing law and jurisdiction);

together with any other provision of this Agreement which expressly or by implication is intended to survive termination.

11. TUPE AND EMPLOYEES ON TERMINATION WHERE APPLICABLE

- 11.1 Where TUPE applies, the parties agree that the outsourcing of the Services to the Supplier shall constitute a service provision change as defined in regulation 3(1)(b) of the TUPE Regulations and that on the Commencement Date the employment of the Employees shall transfer to the Supplier pursuant to the TUPE Regulations.
- 11.2 The Supplier shall be responsible for and shall indemnify and keep indemnified the Customer in full against:
- (a) any Employee Liabilities and Employment Costs arising out of or in connection with the employment or engagement of the Employees or any other person by the Supplier or its Affiliates on and after the Commencement Date;
 - (b) any failure by the Supplier or its Affiliates to comply with its or their obligations under the TUPE Regulations; and
 - (c) any claim against the Customer or its Affiliates by any Employee under regulation 4(9) or 4(11) of the TUPE Regulations.
- 11.3 The parties will comply with their obligations to provide information to a Replacement Supplier about the individuals assigned to the Services and to inform and consult with affected employees in relation to any potential transfer to a Replacement Supplier under the TUPE Regulations.
- 11.4 Notwithstanding clause 12.4, if the undertaking of any services by a Replacement Supplier does not constitute a relevant transfer under regulation 3 of the TUPE Regulations, either the Customer or the Replacement Supplier or their respective Affiliates shall be entitled to make an offer of employment or engagement to any Supplier Personnel.
- 11.5 The Supplier shall not at any time during the last 3 months of the Term or at any time after notice to terminate this Agreement has been given by either party:

- (a) increase or decrease the number of Supplier Personnel performing the Services by more than [20]%;
- (b) increase the remuneration of any Supplier Personnel other than by an annual pay increase of no more than [10]% or otherwise change the terms and conditions of employee of any Supplier Personnel;
- (c) terminate the employment or engagement of any Supplier Personnel; or
- (d) cease to assign any Supplier Personnel to the Services.

11.6 If any person employed or engaged by the Supplier or any of the Supplier's Affiliates or any Sub-contractor other than Supplier Personnel in respect of whom the Supplier provides employee information in accordance with clause 11.3 transfers or alleges that his employment or engagement (or any liability related thereto) transfers to the Customer or any of the Customer's Affiliates or any Replacement Supplier or any of its Sub-contractors (as applicable) as a result of the cessation of all or part of the Services for whatever reasons, the parties will discuss how to address the situation. In the absence of any agreement, the Customer, any of the Customer's Affiliates or any Replacement Supplier or its Sub-contractors (as applicable) may dismiss any such person. The Supplier will indemnify and will keep indemnified the Customer and the Customer's Affiliates (for its or their benefit and for the benefit of any Replacement Supplier or its Sub-contractors) from all Employee Liabilities which the Customer, any of the Customer's Affiliates or any Replacement Supplier or its Sub-contractors may incur as a result of the TUPE Regulations applying or being alleged to apply including Employee Liabilities arising out of or in connection with any dismissal permitted by this clause 11.6 (including the cost of employment until the date of dismissal).

12. PERSONNEL AND NON-SOLICITATION

12.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of performing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of the Supplier Personnel to perform the Services properly; and
- (c) each of the Supplier Personnel complies with the Customer's policies and procedures notified to the Supplier in writing when working on the Customer's sites.

12.2 The Supplier shall be liable for paying all Employment Costs from the Commencement Date and shall be responsible for making all deductions required by Applicable Laws.

12.3 Should the Customer, acting reasonably, consider that any member of the Supplier Personnel should be removed from the provision of the Services the Supplier shall have one month from the date on which the Customer notifies the Supplier of that fact

to provide a replacement member of Supplier Personnel who is reasonably acceptable to the Customer.

- 12.4 Except in relation to a relevant transfer to a Replacement Supplier under the TUPE Regulations, neither the Customer nor the Supplier will, during the period of this Agreement or for a period of 12 months following expiry or termination of this Agreement, howsoever caused, directly or indirectly solicit or attempt to solicit from the employment of the other party or its Affiliates any person employed or engaged by the other who during the period of 12 months prior to the termination of this Agreement was involved in the provision of the Services.

13. CONFIDENTIAL INFORMATION

- 13.1 The Supplier agrees to keep confidential and procure that its Supplier Personnel keeps confidential, both during the Term and thereafter, all Confidential Information of the Customer and not disclose any of the Customer's Confidential Information to any other person without the Customer's prior written consent.
- 13.2 The Supplier shall ensure that such Supplier Personnel, Sub-contractors, and all employees, officers, staff, other workers, agents and consultants of the Sub-contractors are aware of, and comply with, the confidentiality obligations set out in this clause 13.
- 13.3 The Supplier recognises that any breach or threatened breach of this clause 13 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the Supplier agrees that the Customer may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 13.4 This clause 13 shall bind the parties during the Term and following termination of this Agreement.

14. MODERN SLAVERY

- 14.1 The Supplier undertakes, warrants and represents that:
- (a) neither the Supplier nor any of its officers, employees, agents or Subcontractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - (b) it shall comply with the Modern Slavery Act 2015

- (c) it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Subcontractors have breached or potentially breached any of Supplier's obligations under Clause 14. Such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.
- 14.2 Any breach of Clause 14.1 by the Supplier shall be deemed a material breach of the agreement and shall entitle the Customer to terminate the agreement.

15. DISPUTE RESOLUTION

- 15.1 Any question or difference which may arise concerning the construction, meaning or effect of this Agreement shall in the first instance be referred to each party's representative responsible for the Agreement or any other representative nominated by that party for discussion and resolution as soon as reasonably possible and, in any event, within twenty one (21) days of such referral. If the unresolved matter is having serious effect on the Services, the parties will use reasonable endeavours to reduce the elapsed time in completing the process.
- 15.2 If the dispute is not resolved in accordance with clause 15.1 the parties may seek to resolve disputes between them by an alternative dispute resolution technique recommended by the Centre for Effective Dispute Resolution (CEDR).

16. ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between the parties, whether in writing or oral in respect of its subject matter.
- 16.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
- 16.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

17. NOTICES

- 17.1 A notice given to a party under or in connection with this Agreement shall be in writing and in English and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's registered office as that party may notify to the other party in accordance with this Agreement and as set out in clause 17.3 below.
- 17.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause 17 have been satisfied) if delivered by hand, at the time the notice is left at the address, or if sent by post on the second Business Day after posting, unless such deemed receipt would occur outside Business Hours, in which

case deemed receipt will occur when business next starts in the place of receipt, or by email upon receipt of a delivery receipt email from the correct email address unless such deemed receipt would occur outside of Business Hours in which case deemed receipt will occur when the next Business Day starts in place of receipt.

17.3 Notices shall be sent to:

****The Client**** at ...

- (a) The PCS Group Ltd for the attention of George Steele at: Horseshoe Close, Oxgate Lane, London, NW2 7JJ and by email to gsteele@thepcsgroup.co.uk

17.4 Any change to the contact details of a party as set out in clause 17.3 shall be notified to the other party in accordance with clause 17.1 and shall be effective:

- (a) on the date specified in the notice as being the date of such change; or
- (b) if no date is so specified, 5 Business Days after the notice is deemed to be received.

17.5 All references to time are to the local time at the place of deemed receipt.

17.6 This clause does not apply to notices given in legal proceedings or arbitration.

18. FORCE MAJEURE

18.1 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:

- (a) promptly notifies the other of the Force Majeure event and its expected duration; and
- (b) uses reasonable endeavours to minimise the effects of that event.

18.2 If, due to Force Majeure, a party:

- (a) is or is likely to be unable to perform a material obligation; or
- (b) is or is likely to be delayed in or prevented from performing its obligations for a total in any 12 months of operation of this Agreement of more than 10 Business Days,

either party may terminate this Agreement on not less than 4 weeks' written notice.

19. FURTHER ASSURANCE

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

20. VARIATION

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

21. ASSIGNMENT AND SUBCONTRACTING

21.1 Neither party may assign, subcontract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Agreement, without the written consent of the other (such consent not to be unreasonably withheld).

22. SET OFF

Any amount that the Supplier owes to the Customer under this Agreement whether now or at any time in the future, whether it is liquidated or not and whether it is actual or contingent, may be set off from any amount due to the Supplier from the Customer under this Agreement. Any exercise by the Customer of its rights under this clause will not prejudice any other right or remedy available to it.

23. NO PARTNERSHIP OR AGENCY

The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

24. SEVERANCE

24.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

24.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

25. WAIVER

25.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

25.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

25.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

26. COMPLIANCE WITH LAW

Each party shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to them and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform their obligations under or in connection with this Agreement.

27. CONFLICTS WITHIN AGREEMENT

If there is a conflict between the terms contained in the main body of this Agreement and the terms of the schedules, the terms of the main body of the Agreement shall prevail.

28. COSTS AND EXPENSES

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

29. THIRD PARTY RIGHTS

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

30. GOVERNING LAW

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

31. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).