

**Terms and Conditions for the Supply of Goods and Services to Smart Managed Solutions A Trading  
Name of HR Facilities Limited**

**1. Definitions and Interpretation**

1.1 In these Conditions, the following expressions shall have the following meaning:

**Additional Services** the services set out in an Order or otherwise agreed in writing by Smart Managed Solutions A Trading Name of HR Facilities Limited and the Supplier which the Supplier may be instructed to provide pursuant to the Contract.

**Client** means any third party who has engaged Smart Managed Solutions A Trading Name of HR Facilities Limited for the supply of goods and/or the provision of services;

**Commencement Date** has the meaning set out in clause 2.2;

**Conditions** mean these terms and conditions as amended from time to time in accordance with clause 21;

**Confidential Information** means any information relating to Smart Managed Solutions A Trading Name of HR Facilities Limited's or its Client's (or their respective associated companies') businesses which is not in the public domain;

**Contract** means the contract between Smart Managed Solutions A Trading Name of HR Facilities Limited and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

**Smart Managed Solutions A Trading Name of HR Facilities Limited Materials** has the meaning set out in clause 6.4.9;

**Deliverables** all documents, services, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**Goods** means the goods, products or materials (or any part of them) described in the Order;

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

**Smart Managed Solutions A Trading Name of HR Facilities Limited** means Smart Managed Solutions A Trading Name of HR Facilities Limited plc registered in England and Wales with company number 7174215;

**Order** means Smart Managed Solution's order for the supply of Goods and/or provision of Services, as set out in the Smart Managed Solution's purchase order form, or in Smart Managed Solution's written acceptance of the Supplier's quotation as the case may be, and shall include all terms specific to the Goods and Services together with all documents referred to in such Order;

**Services** means the services, including without limitation any Deliverables and the installation of any Goods or any part of them, to be provided by the Supplier under the Contract as set out in the Specification;

**Site** means the place or places where the Goods or Services are to be delivered or provided by the Supplier;

**Specification** includes any specifications, samples, plans, drawings, data or other information against which the Goods or Services are to be supplied and/or provided by the Supplier;

**Supplier** the person or firm or sub-contractor named in the Order from whom Smart Managed Solutions A Trading Name of HR Facilities Limited purchases the Goods and/or Services;

**Warranty Period** In relation to the Goods the longer of (i) 12 months from Smart Managed Solutions A Trading Name of HR Facilities Limited's acceptance of the Goods, or, if later, the installation/commissioning of the Goods; (ii) any period specified as such in the Contract; or (iii) any period implied by law during which the Goods should remain of an implied quality;

**Working Day** means a day other than a Saturday, Sunday or a public holiday in England and Wales, or where the Goods or Services are provided in Scotland, a public holiday in Scotland.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 the headings to the clauses of these Conditions are for convenience only and shall not affect its construction or interpretation;

1.2.2 words denoting any one gender include all genders and vice versa and the singular includes the plural and vice versa;

1.2.3 references to persons include individuals, partnerships, and corporate or unincorporated bodies (whether or not having separate legal personality);

1.2.4 references to a party includes its successors in title or permitted assigns;

1.2.5 references to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.6 any phrase introduced by the terms "other", "including" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the generality of any preceding words; and

1.2.7 a reference to "writing" or "written" includes faxes.

1.3 In the event of any conflict whatsoever between these Conditions and any part(s) of the Order and associated documentation, the terms of these Conditions shall prevail.

## **2. Basis of contract**

2.1 The Order constitutes an offer by Smart Managed Solutions A Trading Name of HR Facilities Limited to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written acceptance of the Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order; at which point and on which date the Contract shall come into existence ("Commencement Date").

2.3 Unless otherwise agreed in writing by an Organisation Partner, Smart Managed Solutions A Trading Name of HR Facilities Limited does business on these Conditions only. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### **3. Price and Payment**

3.1 The total price to be paid for the Goods and/or Services shall be the price set out in the Order, or if no price is quoted, the price for such Goods and/or Services set out in the Supplier's published price list in force at the Commencement Date.

3.2 Unless otherwise stated in the Order, the price shall be:

3.2.1 a lump sum price for the Goods and Services;

3.2.2 fully fixed for the duration of the Contract;

3.2.3 inclusive of the costs of packaging (and the return thereof), packing, shipping, carriage, insurance, delivery, off-loading to the Site and any duties, imposts or levies other than value added tax; and

3.2.4 exclusive of any applicable value added tax (which shall be payable by Smart Managed Solutions A Trading Name of HR Facilities Limited subject to receipt of a valid VAT invoice).

3.3 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Smart Managed Solutions A Trading Name of HR Facilities Limited, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

3.4 In respect of Goods, the Supplier shall invoice Smart Managed Solutions A Trading Name of HR Facilities Limited on or at any time after completion of delivery in accordance with clause 5.8. In respect of Services to be provided for a period of less than 45 days, the Supplier shall invoice Smart Managed Solutions A Trading Name of HR Facilities Limited on completion of the Services. All invoices must be presented to Smart Managed Solutions A Trading Name of HR Facilities Limited within 30 days of the Goods being delivered or completion of the Services, as the context requires.

3.5 Where the Services are scheduled to last for longer than 45 days, and if no other stage or milestone payments are agreed in the Order, the Supplier may invoice Smart Managed Solutions A Trading Name of HR Facilities Limited no earlier than 30 days from the Commencement Date, for that element of the Services provided to that date, and at 45-day intervals thereafter for that element of the Service provided in the 45-day period ending on that date. [For the avoidance of doubt any Goods supplied with the Services shall not be included in any invoice until delivered to Site in accordance with clause 3.4.]

3.6 Each invoice shall include such supporting information required by Smart Managed Solutions A Trading Name of HR Facilities Limited to verify the accuracy of the invoice, including but not limited to:

3.6.1 the relevant purchase order number; and

3.6.2 the address of the Site to which the Goods were delivered and/or Services have been provided.

3.7 Payment shall be due on the date Smart Managed Solutions A Trading Name of HR Facilities Limited receives each invoice. The final date for payment shall be 60 days after the date on which payment becomes due ("the Final Date for Payment").

3.8 If Smart Managed Solutions A Trading Name of HR Facilities Limited intends to pay less than the sum stated as due in the Supplier's invoice, Smart Managed Solutions A Trading Name of HR Facilities Limited shall not later than 5 days before the Final Date for Payment give the Supplier written notice of that intention specifying the sum it considers due to the Supplier at the date the notice is given and the basis on which that sum has been calculated. Where such pay less notice is given, the payment due on or before the Final Date for Payment shall be less the amount stated as due in the pay less notice.

3.9 If Smart Managed Solutions A Trading Name of HR Facilities Limited fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 1% per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Supplier acknowledges that this is a substantial remedy pursuant to the relevant sections of the Late Payment of Commercial Debts (Interest) Act 1998. This clause shall not apply to payments that Smart Managed Solutions A Trading Name of HR Facilities Limited disputes in good faith.

3.10 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Smart Managed Solutions A Trading Name of HR Facilities Limited to inspect such records at all reasonable times on request.

3.11 Smart Managed Solutions A Trading Name of HR Facilities Limited may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Smart Managed Solutions A Trading Name of HR Facilities Limited to the Supplier under the Contract or any other contract, order or arrangement between the parties or otherwise recover such sums as an outstanding debt to Smart Managed Solutions A Trading Name of HR Facilities Limited.

#### **4. Supply of Goods**

4.1 The Supplier warrants that all Goods:

4.1.1 shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Smart Managed Solutions A Trading Name of HR Facilities Limited, expressly or by implication, and in this respect Smart Managed Solutions A Trading Name of HR Facilities Limited relies on the Supplier's skill and judgment;

4.1.2 will be free from any defects in design, material and workmanship and remain so for the duration of the Warranty Period;

4.1.3 correspond with their description and any applicable Specification;

4.1.4 comply with all applicable statutory and regulatory requirements, British Standard or other legal requirements concerning the manufacture, labelling, packaging, storage, handling and delivery of the Goods both in the country of manufacture and under English law; and

4.1.5 comply fully with the terms and requirements of the Contract.

4.2 It shall be the duty of the Supplier to:

4.2.1 ensure the Goods are safe and without risks to health and safety when properly used;

4.2.2 carry out or arrange for the carrying out of such testing, examination or repair as may be necessary for the performance of the duty imposed on them by the preceding sub-clause;

4.2.3 take such steps as are necessary to ensure that there will be available in connection with the use of the Goods adequate information about the use for which it is designed or intended and has been tested, and about any condition necessary to ensure that, when put to use, it will be safe and without risks to health and safety.

4.3 The Supplier shall ensure that the benefit of any warranty, guarantee or other protections provided by the manufacturer or other supplier of the Goods and/or materials supplied as part of the Goods shall extend to Smart Managed Solutions A Trading Name of HR Facilities Limited and the Client; or shall be capable of transfer to Smart Managed Solutions A Trading Name of HR Facilities Limited and the Client and transferred to them on the passing of title in the Goods pursuant to clause 5.9.

4.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4.5 Smart Managed Solutions A Trading Name of HR Facilities Limited shall have the right to inspect and test the Goods during their manufacture, processing or storage at the Supplier's premises, or those of any third party, at any time before delivery. The Supplier shall provide Smart Managed Solutions A Trading Name of HR Facilities Limited or its nominated representative with all facilities reasonably required for inspection and testing.

4.6 If following such inspection or testing Smart Managed Solutions A Trading Name of HR Facilities Limited considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, Smart Managed Solutions A Trading Name of HR Facilities Limited shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Smart Managed Solutions A Trading Name of HR Facilities Limited shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **5. Delivery of Goods**

5.1 The Supplier shall ensure that:

5.1.1 each delivery of the Goods is accompanied by a prominently-displayed delivery note which shows the Order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

5.1.2 the Goods are marked in accordance with Smart Managed Solution's instructions, and properly packed and secured so as to enable them to reach their destination in an undamaged condition;

5.1.3 if the Supplier requires Smart Managed Solutions A Trading Name of HR Facilities Limited to return any packaging material 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.

5.2 No Goods are to be delivered without the prior permission of an Smart Managed Solutions A Trading Name of HR Facilities Limited representative and the Supplier shall provide Smart Managed Solutions A Trading Name of HR Facilities Limited in good time with any instructions or other information required to enable Smart Managed Solutions A Trading Name of HR Facilities Limited to accept delivery of the Goods pursuant to clause 5.8.

5.3 Once delivered, goods shall not be removed from Site without Smart Managed Solution's consent .

5.4 The Supplier shall deliver the Goods:

5.4.1 on the date specified in the Order or, if no such date is specified, then the Goods are to be delivered at times agreed with Smart Managed Solutions A Trading Name of HR Facilities Limited;

5.4.2 to the Site or such other location as is set out in the Order or as instructed by Smart Managed Solutions A Trading Name of HR Facilities Limited before delivery;

5.4.3 during Smart Managed Solution's normal hours of business, or as instructed by Smart Managed Solutions A Trading Name of HR Facilities Limited.

5.5 If at any time the Supplier finds that he will be unable to deliver the Goods on the specified date the Supplier will notify Smart Managed Solutions A Trading Name of HR Facilities Limited immediately, both verbally and in writing. Such notification shall not prejudice the rights of Smart Managed Solutions A Trading Name of HR Facilities Limited under the Contract and in particular Smart Managed Solutions A Trading Name of HR Facilities Limited reserves the right to cancel without prior notice part or the whole of the Order which is not delivered on the due date.

5.6 Time is of the essence and all timescales and dates in an Order must be met by the Supplier. Any failure to meet such timescales and dates shall be treated as a breach which cannot be remedied and shall entitle Smart Managed Solutions A Trading Name of HR Facilities Limited to terminate the Contract without affecting any other of Smart Managed Solution's rights and remedies.

5.7 The Supplier shall not deliver the Goods in instalments without Smart Managed Solution's prior written consent. Where it is agreed that the Goods are 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 shortfall in an instalment shall entitle Smart Managed Solutions A Trading Name of HR Facilities Limited to the remedies set out in clause 7.

5.8 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Site by the Supplier but Smart Managed Solutions A Trading Name of HR Facilities Limited shall not by accepting delivery be deemed to have accepted any Goods as being in accordance with the Contract.

5.9 Title and risk in the Goods shall pass to Smart Managed Solutions A Trading Name of HR Facilities Limited on completion of delivery in accordance with clause 5.8 provided that title in any Goods subsequently rejected by Smart Managed Solutions A Trading Name of HR Facilities Limited as not being in accordance with the Contract shall pass back to the Supplier upon rejection.

## **6. Supply of Services**

6.1 The Supplier shall from the Commencement Date or the date set out in the Order and for the duration of this Contract provide the Services to Smart Managed Solutions A Trading Name of HR Facilities Limited in accordance with the terms of the Contract.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Smart Managed Solutions A Trading Name of HR Facilities Limited.

6.3 Where Smart Managed Solutions A Trading Name of HR Facilities Limited has entered into contract with a Client ("Main Contract"):

6.3.1 the Supplier shall be deemed to know the provisions of the Main Contract insofar as they apply to the Services (other than the details of Smart Managed Solution's pricing). Smart Managed Solutions A Trading Name of HR Facilities Limited shall, if so requested by the Supplier, provide to the Supplier a copy of the Main Contract (omitting details of Smart Managed Solution's pricing);

6.3.2 the Supplier shall perform the obligations and assume the liabilities of Smart Managed Solutions A Trading Name of HR Facilities Limited under the Main Contract to the extent that such obligations and liabilities relate to the Services;

6.3.3 the Supplier shall carry out and complete the Services so that no act or omission of the Supplier shall result in any breach of contract by Smart Managed Solutions A Trading Name of HR Facilities Limited; and

6.3.4 the Supplier shall be responsible for, and shall indemnify Smart Managed Solutions A Trading Name of HR Facilities Limited against any and all damage, expense, loss, cost, claim, proceedings or other liability suffered or incurred by Smart Managed Solutions A Trading Name of HR Facilities Limited as a result of such breaches other than where Smart Managed Solutions A Trading Name of HR Facilities Limited instructs the Supplier to take any action which shall have the effect to put Smart Managed Solutions A Trading Name of HR Facilities Limited in breach of its obligations to any third parties and where Smart Managed Solutions A Trading Name of HR Facilities Limited is aware that the action will result in a breach.

6.4 In providing the Services, the Supplier shall:

6.4.1 co-operate with Smart Managed Solutions A Trading Name of HR Facilities Limited in all matters relating to the Services, and comply with all instructions of Smart Managed Solutions A Trading Name of HR Facilities Limited;

6.4.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

6.4.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

6.4.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Smart Managed Solutions A Trading Name of HR Facilities Limited;

6.4.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

6.4.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Smart Managed Solutions A Trading Name of HR Facilities Limited, will be free from defects in workmanship, installation and design;

6.4.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

6.4.8 observe all health and safety rules and regulations and any other security requirements that apply at the Site;

6.4.9 hold all materials, equipment and tools, drawings, specifications and data supplied by Smart Managed Solutions A Trading Name of HR Facilities Limited to the Supplier ("Smart Managed Solutions A Trading Name of HR Facilities Limited Materials") in safe custody at its own risk, maintain Smart Managed Solutions A Trading Name of HR Facilities Limited Materials in good condition until returned to Smart Managed Solutions A Trading Name of HR Facilities Limited, and not dispose of or use Smart Managed Solutions A Trading Name of HR Facilities Limited Materials other than in accordance with Smart Managed Solution's written instructions or authorisation;

6.4.10 not do or omit to do anything which may cause Smart Managed Solutions A Trading Name of HR Facilities Limited to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Smart Managed Solutions A Trading Name of HR Facilities Limited may rely or act on the Services; and

6.4.11 not carry out any temporary repairs unless agreed by Smart Managed Solutions A Trading Name of HR Facilities Limited. The full cause, effect and impact on the equipment/system in respect of its operation and any Health and Safety implications should be fully disclosed to Smart Managed Solution's Site manager and, if so directed by Smart Managed Solutions A Trading Name of HR Facilities Limited, the Client's Site manager.

6.5 To the extent the Services involve design, the Supplier:

6.5.1 shall use the reasonable skill, care and diligence to be expected of a qualified and competent designer experienced in designing and carrying out services of a similar scope, nature, complexity and size to the Services;

6.5.2 shall not specify for use and shall not use in the provision of the Services any materials:

(a) which by their nature or application contravene any British Standards or EU equivalent;

(b) which contravene the recommendations of the British Council for Offices' publication "Good Practice in the Selection of Construction Materials (2011)"; or

(c) which are generally considered to be deleterious within the construction design professions in the UK.

6.6 Where the Services include the supply or supply and installation of Goods on Site, title in the Goods shall pass to Smart Managed Solutions A Trading Name of HR Facilities Limited on the earlier of:

6.6.1 their delivery to site in accordance with clause 5.8; or

6.6.2 the Supplier becomes entitled to invoice for off-site Goods pursuant to a variation of these Conditions in the Order expressly allowing it to do so; but risk in the Goods shall remain with the Supplier until such point as the Supplier can demonstrate full commissioning processes have occurred, and that these have received Smart Managed Solution's approval that the Goods are fit for purpose and fully operational.

6.7 Where the Supplier becomes entitled to invoice for off-site Goods pursuant to a variation of these Conditions in the Order expressly allowing it to do so, the Supplier shall set the Goods aside and clearly mark them as the property of Smart Managed Solutions A Trading Name of HR Facilities Limited and the Supplier shall allow Smart Managed Solutions A Trading Name of HR Facilities Limited at any time and on reasonable notice to inspect such Goods by allowing access to the property at which those Goods are stored.



6.8 The Supplier shall notify Smart Managed Solutions A Trading Name of HR Facilities Limited as soon as reasonably practicable if it becomes apparent that Additional Services are likely to be required, identifying the required services.

6.9 The Supplier shall perform an Additional Service only on receipt of a written instruction to do so by Smart Managed Solutions A Trading Name of HR Facilities Limited.

6.10 As soon as reasonably practicable after receiving an instruction to perform an Additional Service, the Supplier shall provide Smart Managed Solutions A Trading Name of HR Facilities Limited with a written estimate of cost of the Additional Service and its effect on any applicable programme.

6.11 Unless the parties agree otherwise, the Additional Fee shall be a reasonable amount calculated by reference to the time charges set out in the Order or pursuant to these Conditions, provided that no Additional Fee shall be payable if the requirement for an Additional Service arises from the default or negligence of the Supplier or its sub-contractors or suppliers (if any).

## **7. Remedies**

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Smart Managed Solutions A Trading Name of HR Facilities Limited shall, without limiting its other rights or remedies, have one or more of the following rights:

7.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier; and/or

7.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; and/or

7.1.3 to recover from the Supplier any costs incurred by Smart Managed Solutions A Trading Name of HR Facilities Limited in obtaining substitute on an indemnity basis goods and/or services from a third party; and/or

7.1.4 where Smart Managed Solutions A Trading Name of HR Facilities Limited has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums immediately refunded by the Supplier; and/or

7.1.5 to claim damages for any additional costs, loss or expenses incurred by Smart Managed Solutions A Trading Name of HR Facilities Limited which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights or remedies, Smart Managed Solutions A Trading Name of HR Facilities Limited shall have one or more of the following rights, whether or not it has accepted the Goods:

7.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense and no payment shall be due to the Supplier from Smart Managed Solutions A Trading Name of HR Facilities Limited. Smart Managed Solutions A Trading Name of HR Facilities Limited may impose a reasonable charge for handling, storing and retrieving any Goods over-delivered or otherwise rejected;

7.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;

7.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid) within 5 Working Days;

7.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

7.2.5 to require the Supplier to rectify at its own expense any defects or other faults in the Goods, which appear within the Warranty Period;

7.2.6 if the Supplier shall fail to make good defects or other faults promptly as aforesaid, Smart Managed Solutions A Trading Name of HR Facilities Limited may engage others to carry out the necessary work and the Supplier shall indemnify Smart Managed Solutions A Trading Name of HR Facilities Limited against the cost thereof.

7.2.7 to recover from the Supplier any expenditure incurred by Smart Managed Solutions A Trading Name of HR Facilities Limited in obtaining substitute goods from a third party; and

7.2.8 to claim damages for any additional costs, loss or expenses incurred by Smart Managed Solutions A Trading Name of HR Facilities Limited arising from the Supplier's failure to supply Goods in accordance with clause 4.1.

7.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.4 Smart Managed Solution's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **8. Access and Site Visits**

8.1 Access to the Site must be arranged via Smart Managed Solutions A Trading Name of HR Facilities Limited at least 48 hours prior to the Site visit by providing full details of the names of those persons attending on behalf of the Supplier. Failure to comply may lead to admittance being denied. Smart Managed Solutions A Trading Name of HR Facilities Limited will not be held responsible for any costs or delays incurred by the Supplier for failure to arrange access.

8.2 Smart Managed Solutions A Trading Name of HR Facilities Limited cannot guarantee that car parking is available on Site. However car parking arrangements must be discussed and agreed with Smart Managed Solutions A Trading Name of HR Facilities Limited at least 48 hours prior to the site visit with full details of vehicle registrations.

8.3 On the first visit by any member of staff, a Site induction must be undertaken and signed to confirm that the induction has been completed. Any other Site-specific inductions required by the Client must also be completed.

8.4 Full risk assessments, method statements, COSHH and health and safety policies are to be sent in writing to Smart Managed Solutions A Trading Name of HR Facilities Limited at least one week prior to a Site visit.

8.5 No works will be allowed to be carried out on Site until a Site specific risk assessment and method statement have been provided and accepted by Smart Managed Solutions A Trading Name of HR Facilities Limited. Once risk assessments and method statements have been received on Site, the need for a permit to work will be determined at the commencement of the Site visit.

## **9. Smart Managed Solution's obligations**

Smart Managed Solutions A Trading Name of HR Facilities Limited shall:

9.1.1 provide the Supplier with reasonable access at reasonable times to the Site for the purpose of providing the Services; and

9.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and Smart Managed Solutions A Trading Name of HR Facilities Limited considers reasonably necessary (for the purpose of providing the Services).

## **10. Intellectual property rights**

10.1 The Supplier assigns to Smart Managed Solutions A Trading Name of HR Facilities Limited, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

10.2 The Supplier shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt 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.

10.3 Where the Supplier is, for a reason beyond its control, to affect any assignment required pursuant to clause 10.1, and/or before such assignment is affected the Supplier hereby grants to Smart Managed Solutions A Trading Name of HR Facilities Limited an irrevocable, non-exclusive royalty-free licence to use and reproduce any Deliverables for any purpose connected with the Services (other than by the reproduction of any such designs in any extension to the Services) and to grant sub-licences in the terms of this licence, but copyright in the Deliverables shall remain vested in the Supplier. The Supplier will not be liable for any use of the Deliverables for any purposes other than those for which the same are or were produced. Smart Managed Solutions A Trading Name of HR Facilities Limited shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Supplier with full and proper copies of the Deliverables.

10.4 All Smart Managed Solutions A Trading Name of HR Facilities Limited Materials shall remain at all times the exclusive property of Smart Managed Solutions A Trading Name of HR Facilities Limited.

10.5 In respect of the Goods and any goods that are transferred to Smart Managed Solutions A Trading Name of HR Facilities Limited as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Smart Managed Solutions A Trading Name of HR Facilities Limited, it will have full and unrestricted rights to sell and transfer all such items to Smart Managed Solutions A Trading Name of HR Facilities Limited.

10.6 The Supplier shall, promptly at Smart Managed Solution's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Smart Managed Solutions A Trading Name of HR Facilities Limited may from time to time require for the purpose of securing for Smart Managed Solutions A Trading Name of HR Facilities Limited the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Smart Managed Solutions A Trading Name of HR Facilities Limited in accordance with clause 10.1.

## **11. Liability Insurance and Indemnity**

11.1 The Supplier shall keep Smart Managed Solutions A Trading Name of HR Facilities Limited indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Smart Managed Solutions A Trading Name of HR Facilities Limited as a result of or in connection with:

11.1.1 any claim made against Smart Managed Solutions A Trading Name of HR Facilities Limited by a third party arising out of, or in connection with defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

11.1.2 any claim made against Smart Managed Solutions A Trading Name of HR Facilities Limited by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

11.1.3 any claim made against Smart Managed Solutions A Trading Name of HR Facilities Limited for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

11.2 For the duration of the Contract and for the period and in the amounts stated in the Order thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on Smart Managed Solution's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11.3 This clause 11 shall survive termination of the Contract.

## **12. Confidentiality**

The Supplier 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 Supplier by Smart Managed Solutions A Trading Name of HR Facilities Limited, its employees, agents, subcontractors, or the Client, and any other confidential information concerning Smart Managed Solution's or the Client's business or its products or its services which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier. This clause 12 shall survive termination of the Contract.

## **13. Termination**

13.1 Without limiting its other rights or remedies, Smart Managed Solutions A Trading Name of HR Facilities Limited may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;

13.1.2 the Supplier 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) 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;

13.1.3 the Supplier 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

13.1.4 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 Supplier (being a company);

13.1.5 the Supplier (being an individual) is the subject of a bankruptcy petition order;

13.1.6 a creditor or encumbrancer of the Supplier 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 14 days;

13.1.7 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 Supplier (being a company);

13.1.8 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.1.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

13.1.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.2 to clause 13.1.9 (inclusive);

13.1.11 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or

13.1.12 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Notwithstanding the foregoing and without limiting its other rights or remedies, Smart Managed Solutions A Trading Name of HR Facilities Limited may terminate the Contract at any time:

13.2.1 in respect of the supply of Services, by giving the Supplier 28 days' written notice; and

13.2.2 in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case Smart Managed Solutions A Trading Name of HR Facilities Limited shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

The Supplier may only terminate or suspend the Contract in circumstances where a due payment has been outstanding for 12 weeks from the Final Date for Payment and, thereafter, on giving 7 days notice to Smart Managed Solutions A Trading Name of HR Facilities Limited.

13.3 In any of the circumstances in these Conditions in which Smart Managed Solutions A Trading Name of HR Facilities Limited may terminate the Contract, where both Goods and Services are supplied, Smart Managed Solutions A Trading Name of HR Facilities Limited may at its discretion terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

#### **14. Consequences of Termination**

14.1 On termination of the Contract or any part of it for any reason:

14.1.1 where the Services are terminated, the Supplier shall immediately deliver to Smart Managed Solutions A Trading Name of HR Facilities Limited all Deliverables, whether or not then complete, and return all Smart Managed Solutions A Trading Name of HR Facilities Limited Materials. If the Supplier fails to do so, then Smart Managed Solutions A Trading Name of HR Facilities Limited may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose not connected with this Contract;

14.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

14.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14.2 On termination of the Contract in accordance with clause 7 or clause 13.1.1 the Supplier shall pay Smart Managed Solutions A Trading Name of HR Facilities Limited the reasonable cost of procuring replacement Goods or Services to carry out any unperformed Services or deliveries, to the extent that such cost exceeds the price fixed pursuant to clause 3.1.

14.3 On termination of the Contract pursuant to clause 13.2 Smart Managed Solutions A Trading Name of HR Facilities Limited shall pay the Consultant:

14.3.1 any amount properly due (e.g. substantiated by official service reports) for payment under the Contract at the date of termination; and

14.3.2 a fair and reasonable proportion of the next instalment of the price fixed pursuant to clause 3.1 commensurate with the Services properly performed or Goods properly delivered at the date of termination.

14.4 Payment under clause 14.3 (if any) shall be:

14.4.1 the Supplier's sole entitlement to compensation for termination of this Contract; and

14.4.2 claimed by the Supplier as if it was a payment under clause 3.

14.5 Except as set out in clause 14.3, Smart Managed Solutions A Trading Name of HR Facilities Limited shall not be liable to the Supplier for:

14.5.1 any costs, expenses, disbursements or losses;

14.5.2 any loss of profits, loss of fees, loss of chance or other similar losses; or

14.5.3 any indirect losses or consequential losses arising out of termination of the Contract for any reason.

## **15. Assignment and Sub-Contracting**

15.1.1 Smart Managed Solutions A Trading Name of HR Facilities Limited may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

15.1.2 The Supplier shall not sub-contract, sub-let or otherwise delegate its obligations under the Contract without the prior written consent of Smart Managed Solutions A Trading Name of HR

Facilities Limited. Such consent, if given, shall in no way release the Supplier of its responsibilities under the Contract.

15.1.3 The Supplier shall not assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under the Contract, nor purport to do so.

## **16. Notices**

16.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, to its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Working Day after transmission.

16.3 This clause 16 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

## **17. Waiver and cumulative remedies**

17.1.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.1.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## **18. Severability**

18.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and the parties hereby undertake to make such modifications.

## **19. No Partnership**

19.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

## **20. Third Party Rights**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## **21. Variation**

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Smart Managed Solutions A Trading Name of HR Facilities Limited.

## **22. Disputes**

22.1 In the event of any dispute arising out of or in connection with the Contract the following procedures shall apply:

22.1.1 in the first instance the matter shall be referred by notice from the aggrieved party to the Smart Managed Solutions A Trading Name of HR Facilities Limited Operations Director and the Supplier's representative of equivalent status who shall use their reasonable endeavours to resolve such dispute promptly by negotiation;

22.1.2 in the event that the dispute is not resolved within 21 days following its referral pursuant to clause 22.1.1 the dispute shall be referred to the Managing Directors of each party.

22.2 If the dispute remains on conclusion of the process set out in clause 22.1 the dispute shall be submitted to the Courts of England & Wales in accordance with clause 23.

22.3 If and to the extent that any dispute or difference arises The Adjudicator shall be Mr Paul Taplin of Navigant, a Fellow of the Royal Institution of Chartered Surveyors "RICS" (membership number 0851390) of Navigant, 5th Floor, Woolgate Exchange, 25 Basinghall Street, London, EC2V 5HA United Kingdom.

In the event that Mr Taplin is not able to act in this matter then the Adjudicator shall be a person nominated by the President for the time being of the RICS on the application of either party.

## **23. Force majeure**

Neither party shall be deemed to be in default for any delay or failure in performance of any obligation under this Contract or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbances, accidents, elements or any other cause beyond the reasonable control of such party. Party claiming such force majeure shall give timely notice to other party and shall use due diligence to remedy situation. Such force majeure shall not relieve the nonperforming party of liability in event of its concurrent negligence.

## **24. Governing Law and Jurisdiction**

The 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, subject to clause 22.3, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.