Terms and Conditions of Sale

Version 3 – December 2019

The Customer's attention is particularly drawn to the provisions of clause 13.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

"Conditions"; these terms and conditions as amended from time to time in accordance with clause 17.8.

"Contract"; the contract between you and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

‘‘Commission’’; has the meaning given to it in clause 18.

"Customer"; the person or firm who purchases the Goods and/or Services from the Supplier.

‘‘Data Protection Legislation’’; the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

"Delivery Location"; has the meaning set out in clause 4.3.

"Force Majeure Event"; has the meaning given to it in clause 16.1.

‘‘GDPR’’; General Data Protection Regulation.

"Goods"; the goods (or any part of them) set out in the Order.

"Goods Specification"; any specification for the Goods, including any relevant plans or drawings, that are agreed in writing by the Customer and the Supplier.

"Intellectual Property Rights"; patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or

	extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
‘‘Introduction’’;	the provision to the Customer of the contract details of an employee at a Prospective Client who knows one or more of the individuals at the Supplier and is of sufficient seniority to authorise or recommend the purchase of the Services and/or Goods from the Customer. Introduce, Introduces and Introduced shall be interpreted accordingly.
‘‘Introduction Date’’;	for each Prospective Client, the date during the term of this agreement on which the Supplier first introduces such Prospective Client to the Customer.
‘‘Net Income’’;	the payments made to the Customer for the Services and/or Goods under a Relevant Contract less any value added tax or other sales tax on them, and any discounts or rebates granted by the Customer.
"Order";	the Customer's order for the supply of Goods and/or Services, as set out on the Customer's purchase order form.
‘‘Prospective Client’’;	a person to whom the Customer has not at any time previously provided the Services and/or Goods.
“Regulations”;	The Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1999 and the Control of Substances Hazardous to Health Regulations 2002
‘‘Relevant contract’’;	a contract for the supply of Services and/or Goods entered into during the Introduction Period between the Customer and a Prospective Client who was Introduced by the Supplier.
"Services";	the services, supplied by the Supplier to the Customer in accordance with the Contract.
“Statement of Works”;	the schedule of works or any other statement of works agreed between the Customer and the Supplier, if applicable, which shall form part of the Contract.
"Supplier";	Hydro-X Water Treatment Limited registered in England and Wales with company number 01818133.
"Supplier Materials";	has the meaning set out in clause 9.1.8.
“Term”;	the term for which the Services and/or Goods will be provided as set out in the Statement of Works, if applicable.

"You"; the Customer.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

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

1.2.4 a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**"Commencement Date"**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate by way of reference in an Order or otherwise, or which are implied by trade, custom, practice or course of dealing, and the Customer undertakes that it shall not seek to rely on any other terms than these Conditions.

2.6 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 90 days from its date of issue.

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

3. GOODS

3.1 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.1 shall survive termination of the Contract.

3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 Delivery of the Goods shall be ex-works (as defined by Incoterms 2010), unless otherwise agreed in writing. Unless otherwise specified in the Contract the Supplier shall arrange for suitable transport to the Delivery Location at the Customer's expense.

4.2 The Supplier shall ensure that:

4.2.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.2.2 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.3 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**"Delivery Location"**) at the Customer's expense at any time after the Supplier notifies the Customer that the Goods are ready. The charge per delivery to be paid by the Customer will be confirmed in the Statement of Works, or otherwise notified to the Customer prior to dispatch of the Goods and will be included on the relevant Invoice.

4.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Customer shall be responsible for unloading the Goods and will at its expense provide a Delivery Location, adequate and appropriate equipment and labour for loading or unloading the Goods.

4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.7 If the Customer fails to accept or take delivery of the Goods within three Business Day of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.9 If the Supplier is unable to complete the delivery at the Delivery Location because the Customer is not ready to accept delivery of the Goods, the Supplier will charge the Customer the full cost of the attempted delivery.

4.10 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

5.1 The Supplier's liability (in contract, tort (including negligence), misrepresentation or otherwise) in respect of defects in the Goods shall be limited to the replacement or repair of faulty items or material, or issue of a credit note in respect thereof, or the granting of a refund or other such compensatory measures as the Supplier at its discretion considers appropriate in the circumstances, and shall be conditional upon the Customer complying with the conditions of the manufacturer's warranty (where applicable). Such measures shall relate only to the actual iterms or their value.

5.2 (a) Any returns shall be subject to, and the Customer shall comply with, the Supplier's returns authorisation procedures as set out in clause 5.5;

(b) the Customer shall be responsible for all transportation and insurance costs relating to returned Goods;

(c) the Supplier shall not be responsible for installation of returned Goods after repair or exchange; and

(d) any labour costs and expenses incurred in extracting defective parts and/or components shall be borne by the Customer and if incurred by the Supplier shall be paid for by the Customer at Supplier's then standard applicable rate.

5.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.5 A returns authorisation number must first be obtained from the Supplier's customer service department either by telephone, letter or email:

5.5.1 the Supplier will not accept any returns unless they are notified to the Supplier within 14 days of the date of delivery and returned within 14 days of the date of issue of the returns authorisation number, at the Customer's cost. The notification shall include the reason for the return, e.g. the Goods are defective. The Customer has no right to return Goods which have been delivered in accordance with the Contract;

5.5.2 Goods returned must be in the original packaging and in a clean resalable condition (subject only to defects which have been notified to the Supplier in accordance with clause 5.5.1). The returns authorisation number must be written on a label attached to the packaging. Any Goods not meeting these criteria may, at the Supplier's discretion, be refused and returned to the Customer and/or, a handling charge (equal to a minimum of 15% of the order value of the Goods involved) will be levied to the Customer account to cover the additional costs involved (such as, without limitation, repackaging costs and/or the carriage and associated costs of returning the Goods to

the Customer). In addition, the Customer will be charged for any damage caused to the Goods whilst they were in the Customer's custody or control;

5.5.3 if the Customer fails to make Goods ready for collection on the return date agreed with the Supplier, the Supplier reserves the right to charge the Customer a handling fee;

5.5.4 if, upon examination by the Supplier or the manufacturer, the returned Goods are found not to be effective, the Supplier reserves the right to return the Goods to the Customer and to charge the Customer a handling fee equal to a minimum of 15% of the order value of the relevant Goods. In addition, the Customer shall be deemed to have purchased the replacement goods on these terms and conditions and the Supplier shall be entitled to invoice the Customer for the replacement goods;

5.5.5 the Supplier shall not be responsible for the loss in transit of any Goods where the Customer makes its own arrangements to return the Goods to the Supplier.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.13; and

6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

6.4.1 it does so as principal and not as the Supplier's agent; and

6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.13, then, without limiting any other right or remedy the Supplier may have:

6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2 the Supplier may at any time:

6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. USE AND INSTALLATION

7.1 Product performance specifications indicate the performance available from a given product and any selection of Goods which includes a product intended by the Purchaser for a purpose outside the Limits of its specifications should not be made.

7.2 Advice on product selection can be obtained from the Supplier.

7.3 When installing any Goods, it is important to comply with the Health & Safety at Work Act 1974 and the Electricity at Work Regulations 1985, plus any other relevant requirements. All electrical installations should comply with the Institute of Engineering and Technology Wiring Regulations BS7671 latest edition, including amendments. The customer should employ the services of qualified, competent personnel for all installations and gain appropriate certification where required.

8. SUPPLY OF SERVICES

8.1 The Supplier shall provide the Services to the Customer in accordance with the Contract in all material respects.

8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

9.1.2 ensure that a purchase order number is provided to the Supplier in good time prior to the Goods or Services being delivered (or, if agreed with the Supplier, a signed acceptance of a quotation and Statement of Works in the place of a purchase order number);

9.1.3 co-operate with the Supplier in all matters relating to the Goods and Services;

9.1.4 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and Services;

9.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and Services, and ensure that such information is accurate in all material respects;

9.1.6 prepare the Customer's premises at its own cost for the supply of the Goods or Services including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with our applicable Laws;

9.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start or the Goods delivered;

9.1.8 keep and maintain all materials, equipment, documents and other property of the Supplier (**"Supplier Materials"**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

9.1.9 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer’s premises;

9.1.10 ensure that the Customer complies in full with its obligations to control the risks from legionella bacteria within water systems (HSE ACoP L8 provides guidance on what actions must be taken to comply with the Legislation);

9.1.11 ensure it complies with The Notification of Cooling Towers and Evaporative Condensers Regulations 1992 and The Reporting of Legionella Diseases and Dangerous Occurrences Regulations 2013;

9.1.12 not re-package the Goods or remove or alter any trademarks, patent numbers, serial numbers or other identifying marks on the Goods or their packaging or add any other trademarks, patent numbers, serial numbers or other identifying marks to the Goods or their packaging.

9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**"Customer Default"**):

9.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

9.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and

9.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default or cancellation (which for the avoidance of doubt shall include the full cost of labour resulting from delay, postponement or denial of entry for the provision of Services).

10. CHARGES AND PAYMENT

10.1 The price for Goods shall be the price set out in the Contract. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

10.2 The charges for Services shall be set out in the Contract which will specify whether the price for the services is provided on fixed costs basis or on a time and material basis.

10.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

10.4 Where the Supplier incurs extra cost owing to suspension or alteration of the Services arising from the Customer's instructions or lack of instructions, or by reason of interruptions, delays, overtime, unusual hours, mistakes or work occasioned by the act or default of the Customer, such cost shall be added to the contract price and paid for by the Customer.

10.5 The Supplier reserves the right to:

10.5.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

10.5.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

10.5.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

10.5.1.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

10.6 Where the Customer does not have an authorised credit amount with the Supplier, the total price of the Goods and/or Services together with all other payments due to the Supplier shall be payable prior to the dispatch of the Goods or commencement of the services whichever is the earlier.

10.7 The Supplier shall be entitled to withdraw any credit facilities offered to the Customer at any time. Upon withdrawal of the credit facility, all sums outstanding shall become immediately due and payable to the Supplier.

10.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**"VAT"**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.9 All invoices are payable by the Customer within 30 days of (the date of invoice) or (the end of the month referred to on the invoice).

10.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual

payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10.12 All credit and charge card holders are subject to validation checks and authorisation by the card issue. If the issue of the payment card refuses to authorise payment to the Supplier, the Supplier will not be liable for any delay or non-delivery.

10.13 In the interests of preventing fraudulent use of credit, debit and charge cards, the Supplier will validate the names, addresses and other information supplied during the order process against commercially available records (e.g. Electoral Roll data, Credit Reference Services). A third party may also be instructed to complete these checks. By purchasing with a credit or charge card, the Customer consents to such checks being made. The Supplier may need to contact the Customer by letter, telephone or email to verify details before the Supplier is able to process and dispatch an order or the Supplier may be unable to accept the order. Any information given may be disclosed to a registered Credit Reference Agency which may keep a record of the information. All information provided will be treated in accordance with the Data Protection Act 1998.

10.14 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

11.3 All Supplier Materials are the exclusive property of the Supplier.

12. CONFIDENTIALITY

A party (**"receiving party"**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**"disclosing party"**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12 shall survive termination of the Contract.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude 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;

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

13.1.5 defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

13.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

13.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Contract.

13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

14. INDEMNITY

The Customer shall indemnify the Supplier in respect of all damage or injury occurring to any person, firm, Company or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which the Supplier may become liable in respect of the Goods/Services sold under the Contract in the event that the damage or the injury shall have been occasioned otherwise than by negligence of the Supplier.

15. TERMINATION

15.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

15.1.1 the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 15 days after receipt of notice in writing to do so;

15.1.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

15.1.3 the Customer 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 Customer with one or more other companies or the solvent reconstruction of the Customer;

15.1.4 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of that other party;

15.1.5 the Customer (being an individual) is the subject of a bankruptcy petition or order;

15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

15.1.7 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 Customer (being a company);

15.1.8 the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

15.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

15.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.2 to clause 15.1.9 (inclusive);

15.1.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

15.1.12 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

15.1.13 the Customer (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.

15.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

15.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15.4 The Customer may terminate the Contract after the expiry of the initial Term by giving 3 months written notice to the Supplier. The Term shall continue to renew automatically on a periodic basis (as set out in the Statement of Works, or if no initial period is set out, then on an annual basis), based on the initial Term until terminated in accordance with the Contract.

15.5 On termination of the Contract for any reason:

15.5.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.5.2 the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

15.5.3 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 or expiry; and

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

15.6 In the event the Customer cancels the Contract for the supply of Goods at any time before the Goods are supplied by the Supplier, the Customer must immediately pay a sum equivalent to 130% of the value of the Goods referred to in the quotation provided by the Supplier to the Customer.

16. FORCE MAJEURE

16.1 For the purposes of this Contract, **"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.

16.2 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.

16.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than six weeks, 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.

17. GENERAL

17.1 Assignment and other dealings.

17.1.1 The Supplier may at any time assign, transfer, mortgage, 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.

17.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 **Notices.**

17.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.

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

17.3 **Severance.**

17.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.3.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.4 **Waiver.** A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

17.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

17.7 **Entire agreement.**

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

17.7.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

17.9 **Governing law.** 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 the law of England and Wales.

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

18. COMMISSIONS

18.1 The Supplier shall be entitled to Commission if a Prospective Client Introduced by the Supplier enters into a Relevant Contract.

18.2 The amount of Commission payable shall be at the rate of 20% of the Customers' Net Income received under each Relevant Contract (as it may be renewed, extended or amended) during a period of 12 months from its commencement date (Commission).

18.3 The Customer shall promptly notify the Supplier in writing of the following

18.3.1 The date it enters into a Relevant contract;

18.3.2 The amount of the payments due for Services and/or Goods under it; and

18.3.3 The dates on which payments for such Services and/or Goods are payable

no later than 3 Business Days after it enters into such Relevant Contract

18.4 Except where the procedures set out in clause 18.5 and 18.6 below have been followed, all Commission payable pursuant to clause 18.2 shall be due to the Supplier (whether invoiced or not) within 30 days of the end of the month in which the Customer received the corresponding payment for Services and/or Goods. If the Customer receives payment under any relevant Contract in instalments, then Commission shall be calculated and paid on such instalments as they are received by the Customer.

18.5 The customer shall within 5 days of the end of the month in which the Customer received the corresponding payment for Services and/or Goods send to the Supplier a written statement setting out, in respect of such month, and in respect of each Relevant Contract:

a) The Commission payable to the Supplier;

b) The payments for Services and/or Goods received and details of any sums due which have not been received; and

c) How the Commission has been calculated, including details of all deductions made in determining Net Income.

18.6 The Supplier shall invoice the Customer for the Commission payable in accordance with the Supplier's statement submitted pursuant to clause 18.5, together with any applicable VAT, in which case, notwithstanding clause 18.4 above, the due date for payment by the supplier of such Commission shall be 30 days from date of receipt of invoice.

18.7 The Customer shall keep separate accounts and records, giving correct and adequate details of all Relevant Contracts entered into by the Customer, all payments received under them and all deductions made in the calculation of Net Income. The Customer shall permit the duly appointed representatives of the Supplier at all reasonable times, to inspect all such accounts and records and to take copies of them. For the avoidance of doubt, all rights in such records (including database right and copyright) shall belong to the Customer.

18.8 If any dispute arises as to the amount of Commission payable by the customer to the Supplier, the same shall be referred to the Customer's auditors for settlement and their decision, save in the case of manifest error, shall be final and binding on both parties.

19. DATA PROTECTION AND DATA PROCESSING

19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 19, Applicable Laws means (for so long as and to the extent that they apply to the supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and domestic UK Laws means the UK Data Protection Legislation and any other law that applies in the UK.

19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

19.3 Without prejudice to the generality of clause 19.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.