

MAINTENANCE SERVICES AGREEMENT TERMS

These terms govern all maintenance service agreements entered into by **Commercial Leisure Services LLP**, a private company registered in England with company number: OC417298 and whose registered office is at Unit 12a, 2M Trade Park Beddow Way, Aylesford, Kent, ME20 7BT. VAT number: 274 9763 50 (the **Supplier**) that are entered into with Customers.

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in these terms (unless the context requires otherwise):

Applicable Fees: the fees that are charged by the Supplier to the Customer for the provision of the Works included in a Services Agreement, and the cost of any Products supplied as part of the Works, as such fees are set out in the relevant Services Agreement.

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

Business Hours: the period from 8.00 am to 5.00 pm on any Business Day.

Change Order: has the meaning given in clause 8.1.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation.

Customer: the party identified as such in the relevant Services Agreement.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 and all other legislation and regulatory requirements in force

from time to time which apply to a party relating to the use of personal data.

Deliverables: any output of the Works to be provided by the Supplier to the Customer as specified in a Services Agreement and any other documents, Products and materials provided by the Supplier to the Customer in relation to the Works (excluding the Supplier's Equipment).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Services Agreement.

Products: any products provided by the Supplier to the Customer in connection with any Works, as such Products are detailed in the relevant Services Agreement.

Relevant Premises: any premises at which Works are to be undertaken, as specified in the relevant Services Agreement.

Services Agreement: a maintenance services agreement between the Customer and the Supplier containing a detailed plan, agreed in accordance with **Error! Bookmark not defined.** **Error! Reference source not found.**, describing the Works to be provided by the Supplier, the timetable for their performance and any other related matters.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, used by the Supplier at any Relevant Premises directly or indirectly in the supply of the Works.

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

VAT: value added tax chargeable in the UK.

Works: the services which are agreed to be provided by the Supplier under a Services Agreement, as set out in the relevant Services Agreement.

- 1.2 The headings in these terms are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under it.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 The Schedules to a Services Agreement form part of that agreement.
- 1.6 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 A reference to **writing** includes email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Commencement and duration

- 2.1 A Services Agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 15 (*Termination*), until either party gives to the other party 90 days written notice to terminate it.
- 2.2 If there are no uncompleted Works as at the date notice to terminate a Services Agreement is served under clause 2.1 such notice shall terminate such Services Agreement with immediate effect.
- 2.3 The Supplier shall provide the Works from the date specified, and according to any timetable set out, in the relevant Services Agreement.
- 2.4 The parties will be deemed to have accepted these terms and any additional terms in any Services Agreement if the Supplier begins the provision of any Works agreed with the Customer notwithstanding that the Customer has not provided a suitably signed copy of any relevant Services Agreement.

3. Services Agreement

- 3.1 Once the Customer and Supplier have reached agreement on any Works required by the

Customer, the Supplier shall provide the Customer with a draft Services Agreement outlining such Works, their completion timetable, the Applicable Fees and their payment schedule, and any other matters relevant to the requested Works.

- 3.2 Once the Customer and Supplier have agreed the draft Services Agreement and have signed it then it shall be binding on them and it shall be governed by these terms. Once a Services Agreement has been agreed and signed no amendment shall be made to it except in accordance with clause 8 (*Change control*) or clause 26 (*Variation*).
- 3.3 Prior to signing a Services Agreement, the Supplier shall be free to decline any request for the provision of Works for any reason, and without needing to provide a reason.

4. Supplier's responsibilities

- 4.1 The Supplier shall use reasonable endeavours to provide the Works, and deliver the Deliverables to the Customer, in accordance with a Services Agreement in all material respects.
- 4.2 The Supplier shall use reasonable endeavours to meet any Milestones specified in a Services Agreement but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of that agreement.
- 4.3 The Supplier shall appoint a manager in respect of the Works to be performed under a Services Agreement, such person as identified in the Services Agreement. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing Change Orders). The Supplier may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
- 4.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any Relevant Premises and that have been communicated to it under clause 5.1(e), provided that it shall not be liable under a Services Agreement if, as a result of such observation, it is in breach of any of its obligations under that agreement. If the Customer wishes to make a change to those requirements which will materially affect provision of the Works, it can only do so via the change control procedure set out in clause 8 (*Change control*).
- 4.5 The Supplier shall take reasonable steps to minimise any noise, environmental pollution or nuisance at a Relevant Premises as a result of any Works.

5. Customer's obligations

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Works;
- (b) appoint a manager in respect of the Works to be performed under a Services Agreement, such person as identified in the Services Agreement. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Works (including by signing Change Orders);
- (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in a Services Agreement;
- (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Services Agreement or otherwise reasonably required by the Supplier in connection with the Works and ensure that they are accurate and complete in all material respects;
- (e) inform the Supplier of all health and safety and security requirements that apply at any Relevant Premises;
- (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Works, including in relation to the installation of the Supplier's Equipment, in all cases before the date on which the Works are to start;
- (g) comply with any additional responsibilities of the Customer as set out in the relevant Services Agreement.

5.2 If the Supplier's performance of its obligations under a Services Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

6. Products

- 6.1 The Supplier may provide Products to the Customer in connection with any Works as specified in the relevant Services Agreement. The cost of any Products shall be set out in the relevant Services Agreement.
- 6.2 Certain Products (such as chemicals) may only be available to customers who hold a valid Explosives Precursors and Poisons (EPP) licence issued by the Home Office and an associated photo ID. The Supplier will require sight of such documents before sales of these Products can be made. The shipping of certain of the Products (such as chemicals) may be subject to additional rules governing their transport, such as the 'limited quantity' rules set out in the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) regulations.
- 6.3 The relevant Product page on the Supplier's website (<https://www.comls.co.uk>) will identify where any such matters are relevant to any Products, and the Customer should review such information to ensure that it understands any special requirements that attach to such Products.
- 6.4 All Products are provided by the Supplier to the Customer in accordance with the Supplier's Online/Telephone Order Terms (available here: <https://www.comls.co.uk/terms-conditions>) including in particular the section headed 'Our Liability' which limits the Supplier's liability in respect of Products provided by it, which terms are included by reference into these terms in respect of any Products being provided to the Customer.

7. Non-solicitation and employment

- 7.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date on which any Works commence to the expiry of 6 months after the completion of such Works, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of such Works.
- 7.2 Any consent given by the Supplier in accordance with clause 7.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

8. Change control

- 8.1 Either party may propose changes to the scope or execution of any Works but no proposed changes shall come into effect until a relevant written amendment to such Works (a **Change Order**) has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Works;
 - (b) the Applicable Fees;
 - (c) the timetable for the Works and payment of the Applicable Fees; and
 - (d) any of the other terms of the relevant Services Agreement.
- 8.2 If the Supplier wishes to make a change to the Works it shall provide a draft Change Order to the Customer.
- 8.3 If the Customer wishes to make a change to the Works:
- (a) the Customer shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 8.3(a), notify the Customer of its daily rates for dealing with changes as referenced under clause 8.5 and provide the Customer with an opportunity to reject such costs and withdraw the proposed changes, following which the Supplier shall review the proposed changes and either: (i) provide a draft Change Order to the Customer; or (ii) notify the Customer that it does not agree to the proposed changes.
- 8.4 If the parties:
- (a) agree to a draft Change Order, then they shall sign it and that Change Order shall amend the relevant Services Agreement; or
 - (b) are unable to agree a draft Change Order, then the proposed changes shall not be effective and the Supplier shall continue to provide the Works as originally set out in the Services Agreement until such time as the parties are able to agree the relevant changes.
- 8.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which

implement changes proposed by the Customer pursuant to clause 8.3 on a time and materials basis at the Supplier's daily rates notified to the Customer under clause 8.3(b).

9. Charges and payment

- 9.1 In consideration of the provision of the Works by the Supplier, the Customer shall pay the Applicable Fees.
- 9.2 Where the Applicable Fees are calculated on a time and materials basis the Supplier's hourly fee rates will be as set out in the Services Agreement for: (i) hours worked during Business Hours; and (ii) hours worked outside of Business Hours.
- 9.3 Where the Applicable Fees are calculated on a fixed price basis, the amount of those charges shall be as set out in a Services Agreement.
- 9.4 The Applicable Fees exclude the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are set out in the Services Agreement, or otherwise approved by the Customer in advance from time to time, which costs shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice.
- 9.5 The Supplier may increase its charges from time to time, with the effect that Applicable Fees set out under a new Services Agreement may differ from the Applicable Fees for the same Works set out under a prior Services Agreement.
- 9.6 Where a Services Agreement details Works that are to be provided over a period that exceeds 12 months then the Supplier may, from each anniversary of the date of the relevant Services Agreement increase the Applicable Fees outlined in it in line with the percentage increase in the Average Weekly Earnings Index in the preceding 12-month period (based on the latest available figures) with the first such increase taking effect on the first anniversary of the date of the relevant Services Agreement.
- 9.7 The Supplier shall invoice the Customer for the Applicable Fees at the intervals specified, or on the achievement of the Milestones indicated, in the Services Agreement. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Works performed during that month.
- 9.8 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from

- time to time. The Supplier may require earlier or advanced payment, or part payment, from the Customer in respect of any Works that have a total value in excess of £2,000 plus VAT.
- 9.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under these terms or any relevant Services Agreement on the due date:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) the Supplier may suspend part or all of the Works being provided under any Services Agreement with that Customer until payment has been made in full.
- 9.10 All sums payable to the Supplier under these terms and any relevant Services Agreement:
- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.11 If the Customer wishes to cancel an arranged site visit then the Supplier must be notified in writing or via email at least 5 Business Days in advance. If this is not done or if for any reason the Supplier is not able to gain access to the Relevant Premises to conduct any Works, the Customer will be liable for the cost of such visit which will be invoiced to the Customer on the next monthly invoice.
- 9.12 Any parking & London Congestion or other similar charges accrued during a maintenance visit to a Relevant Premises will be invoiced at cost to the Customer on the corresponding monthly invoice.
- 9.13 An administration charge of £25 plus VAT will be added to any invoice in respect of each change that may be required to be made to it after it has been issued that is necessary to reflect any changes to the details of the Customer (such as address) that have been provided under any Services Agreement of which the Supplier was not previously aware.
- 9.14 The Customer, and not any end user benefitting from the Works (such as tenants in flat where the Customer is a block management company) is solely responsible for payment of all sums due to the Supplier under these terms or any Services Agreement.
- 10. Intellectual property rights**
- 10.1 All Intellectual Property Rights belonging to the Supplier at the date of any Services Agreement or at any later date at which the Supplier is providing any Works to the Customer, including all rights in any materials provided by the Supplier as part of the Works shall at all times remain the property of the Supplier.
- 10.2 All Intellectual Property Rights in any Works and Inventions developed by the Supplier during the course of providing any Works shall belong to the Supplier and the Customer undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Supplier and at any time either during or after the Engagement, as may, in the opinion of the Supplier, be necessary or desirable to vest such Intellectual Property Rights in the name of the Supplier. Insofar as they do not vest automatically by operation of law or under these terms, the Customer holds legal title in these rights and inventions on trust for the Supplier.
- 11. Data protection**
- 11.1 While it is not anticipated that either party will provide the other with any significant amount of personal data that it has gathered:
- (a) the Supplier may be providing to the Customer limited personal data (such as business contact information) on those of its employees who are to be undertaking the Works to enable the Customer to coordinate the provision of the Works (in respect of which personal data the Supplier will be the controller and the Customer will be the processor); and
 - (b) the Supplier may receive limited personal data held by the Customer in the course of providing the Services such as business contact details for relevant employees of the Customer to enable the provision of the Works to be coordinated (in respect of which personal data the Customer will be the controller and the Supplier will be the processor).
- 11.2 To the extent that the Data Protection Legislation does apply to any personal data transferred

between the parties in connection with the Works (whether as outlined in clause 11.1 or otherwise) the parties agree to:

- (a) abide by their obligations under the Data Protection Legislation in respect of such personal data, including ensuring that each party has in place appropriate technical or organisational measures to protect against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data having regard to the state of technological development and the cost of implementing any measures;
- (b) only process such personal data for the purposes for which it was provided;
- (c) as processor, process such personal data only on the written instructions of the controller;
- (d) not transfer such personal data outside of the United Kingdom unless, in accordance with the Data Protection Legislation, the relevant party ensures that an appropriate legal mechanism is in place to permit such transfer;
- (e) assist the other party in responding to any data subject access request or any exercise by a data subject of its rights under the Data Protection Legislation and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of a data breach affecting personal data provided by the other party or of any communication which relates to compliance with the Data Protection Legislation;
- (g) at the written request of the other party, delete or return such personal data (and any copies of the same) to the other party on termination of the Works unless required by the Data Protection Legislation to store such personal data; and
- (h) maintain complete and accurate records and information to demonstrate compliance with this clause 11.

11.3 Subject to clause 18, neither party may appoint any third party processor of any personal data received from the other without the prior written

consent of that other party and unless such third party processor enters into a written agreement which incorporates terms which are substantially similar to those set out in this clause 11. The party appointing a third party processor shall remain fully liable for all acts or omissions of such third party processor.

11.4 Each party agrees to indemnify the other against any loss, liability, costs (including reasonable legal costs), damages or expenses arising from the breach by it of any of the provisions of this clause 11.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time during the existence of a Services Agreement, and for a period of five years after termination or expiry of such agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2(a).

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with a Services Agreement. Each party shall ensure that its employees, officers, representatives, advisers, contractors or subcontractors to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority or in reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution.

12.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with a Services Agreement.

13. Limitation of liability

13.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and

exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 13.2 References to liability in this clause 13 include every kind of liability arising under or in connection with these terms or any Services Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 Nothing in this clause 13 shall limit the Customer's payment obligations under these terms or any Services Agreement.
- 13.4 Neither party excludes or limits liability to the other party for fraud or fraudulent misrepresentation, death or personal injury caused by negligence or any other matter for which it would be unlawful for the parties to exclude liability.
- 13.5 Subject to clause 13.4 the Supplier shall not be liable to the Customer for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, and indirect or consequential loss.
- 13.6 The Supplier has given commitments as to compliance of the Works with relevant specifications in clause 4.1 (*Supplier's responsibilities*). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these terms and any Services Agreement.
- 13.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.8 Subject to clauses 13.4 and to any other limits on the Supplier's liability contained in this clause 13 the Supplier's total aggregate liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of any Services Agreement or any Works made or

provided under it, or any shall be limited to an amount equal to 50% of the Applicable Fees received by the Supplier under that Services Agreement in the 12 month period prior to the event giving rise to the claim occurring.

14. Insurance

The Supplier shall on request supply to the Customer copies of its relevant insurance policies covering the Works and evidence that the relevant premiums have been paid.

15. Termination

- 15.1 Notwithstanding the provisions of clause 2.1, either party may terminate a Services Agreement with immediate effect without notice if at any time:

- (a) the other party commits any serious or repeated breach or non-observance of any of the provisions of these terms or the relevant Services Agreement (with any failure by the Customer to pay any Applicable Fees on their due date being a serious breach); and/or
- (b) the other party makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to that other party or any of its assets.

- 15.2 Without affecting any other right or remedy available to it, the Supplier may terminate a Services Agreement with immediate effect by giving notice to the Customer if there is a change of Control of the Customer.

16. Obligations on termination

- 16.1 On termination or expiry of a Services Agreement:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of any Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt.
 - (b) the Customer shall, return all of the Supplier's Equipment and if the Customer fails to do so then the Supplier may enter the Customer's premises during Business Hours and take possession of the Supplier's Equipment;
 - (c) until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping); and

- (d) any provision of these terms or any Services Agreement that expressly or by implication is intended to come into or continue in force on or after such termination or expiry shall remain in full force and effect.
- 16.2 Termination or expiry of a Services Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 17. Force majeure**
- 17.1 Neither party shall be in breach of these terms or a Services Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control, including:
- (a) epidemic or pandemic;
 - (b) acts of God, war, riots, terrorist attacks, flood, drought, earthquake or other natural disaster;
 - (c) any labour or trade dispute, strikes, industrial action or lockouts;
 - (d) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (e) interruption or failure of utility service.
- 17.2 Provided that the affected party has used all reasonable endeavours to mitigate the effect of the relevant event on the performance of its obligations then the time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the affected Services Agreement by giving one month's written notice to the affected party
- 18. Subcontracting**
- 18.1 The Supplier may at any time sub-contract the provision of any of the Works to any third party, subject to the sub-contractor first entering into a written agreement with the Supplier under which the sub-contractor agrees to be bound by equivalent obligations in respect of any sub-contracted services (including as to confidentiality and data protection) as the Supplier is under the relevant Services Agreement.
- 18.2 The Supplier shall remain liable to the Client for any acts or omissions of any sub-contractor in providing any sub-contracted Works.
- 19. Assignment and other dealings**
- 19.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under a Services Agreement.
- 19.2 The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under a Services Agreement.
- 20. Rights and remedies**
- 20.1 A waiver of any right or remedy under these terms, a Services Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 20.2 A failure or delay by a party to exercise any right or remedy provided under these terms, a Services Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 20.3 The rights and remedies provided under these terms and any Services Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 21. Severance**
- If any provision or part-provision of these terms or any Services Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the other terms and the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 22. Conflict**
- If there is an inconsistency between any of the provisions of these terms and the provisions of any Services Agreement, the provisions of the Services Agreement shall prevail.
- 23. Status**
- 23.1 The relationship of the Supplier to the Customer will be that of independent contractor. Nothing in these terms or any Services Agreement shall render the Supplier an employee, worker, agent or partner of the Customer and the Supplier shall not hold itself out as such.

23.2 The Customer acknowledges that the Supplier acts in an independent capacity and is free to provide services to any other entities and customers.

24. Notices

24.1 Any notice given to a party under or in connection with these terms or any Services Agreement shall be in writing and shall be:

- (a) delivered by hand or a next Business Day recorded delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified on the cover page to the relevant Services Agreement.

24.2 A notice is deemed to have been received:

- (a) if delivered by hand, at the time the notice has been signed for at the proper address;
- (b) if sent by recorded delivery service, at 9.00 am on the first working day after the delivery date recorded by the delivery service; or
- (c) if sent by email, at 9.00 am the next Business Day after transmission (unless an e-mail rejection notice has been received).

24.3 In proving the service of any notice, it will be sufficient to prove:

- (a) in the case of a letter, that such letter was signed for (if delivered by hand) or that delivery has been recorded by a recorded delivery service; or
- (b) in the case of an email, that such email was sent to the specified email address of the addressee.

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

25. Entire agreement

25.1 These terms and any relevant Services Agreement constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Works provided under a Services Agreement.

25.2 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 these terms.

26. Variation

26.1 Subject to clause 8 (*Change control*), no variation of any Services Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

26.2 The Supplier may update these terms from time to time by uploading a new version of these terms to its website. These terms apply to any Services Agreements entered into during such time as these terms are available on the Supplier's website.

27. Counterparts

Any Services Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

28. Third party rights

28.1 These terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999.

28.2 The rights of the parties to rescind or vary a Services Agreement are not subject to the consent of any other person.

29. Governing law and Resolution

29.1 These terms and each Services Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them shall be governed by and construed in accordance with English law.

29.2 If a dispute arises out of or in connection with these terms or any Services Agreement (a **Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a **Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, an appropriately authorised senior employee of each party shall attempt in good faith to resolve the Dispute; and
- (b) if the parties are for any reason unable to resolve the Dispute within 30 days of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. The mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (an **ADR Notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to

CEDR. The mediation will start not later than 14 days after the date of CEDR's nomination of a mediator.

- 29.3 No party may commence any court proceedings under clause 29.4 in relation to any part of the Dispute until 30 days after service of the ADR Notice.
- 29.4 Subject to clause 29.3, each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms or any Services Agreement.