**FALKLAND ISLANDS GOVERNMENT**

**Standard Terms and Conditions of Agreement**

**1. Introduction**

These Conditions govern the supply of Goods and/or Services between the Customer and the Supplier (each as defined in clause 2).

**2. Definitions**

2.1 The following definitions apply in these Conditions:

**Agreement:** the contract between (i) the Customer and (ii) the Supplier for the supply of Goods and/or Services comprising the Purchase Order and the Conditions;

**Applicable Laws:** all applicable laws, ordinances, statutes, rules, regulations, secondary legislation, bye-laws, common law, directives, the judgements, decisions or orders of any court or tribunal of competent jurisdiction, codes of practice, standards, guidance and other requirements, each having the force of law for the time being in the Falkland Islands;

**Business Day:** a day (other than a Saturday, Sunday or public holiday in the Falkland Islands) on which Standard Chartered Bank is open for business in Stanley, Falkland Islands;

**Charges:** the charges for the Goods and/or Services as specified in the Purchase Order;

**Commencement Date:** the commencement date of the Term specified in the Purchase Order;

**Conditions:** these terms and conditions (as amended from time to time in accordance with clause 29.2);

**Confidential Information:** all information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) provided by the Disclosing Party in respect of its business, customers, finance or other affairs, to the Recipient, and which is known by the Recipient to be confidential, is marked as or stated to be confidential, or ought reasonably to be considered by the Recipient to be confidential;

**Customer:** the Falkland Islands Government;

**Customer Materials:** shall be as defined in clause 8.2.10;

**Deliverable:** all documents, 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);

**Disclosing Party:** shall be as defined in clause 16.1.1;

**Expiry Date:** the date for expiry of the Term as set out in the Purchase Order;

**Goods:** the goods (or any part of them) to be supplied by the Supplier to the Customer under this Agreement, as described in the Purchase Order or the Goods Specification;

**Goods Specification:** the description of or specification for the Goods (including as to quantity, description and quality and any related plans and drawings), as set out in the Purchase Order or as agreed in writing by the Parties;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, service 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 now or will in the future in any part of the world;

**Key Personnel:** any persons specified as such in the Purchase Order or otherwise notified as such by the Customer to the Supplier in writing;

**Party:** the Supplier or the Customer (as appropriate) and **Parties** shall mean both of them;

**Personal Data:**  any data relating to a living individual who is or can be identified from that data alone or in conjunction with other information held by another person;

**Purchase Order:** the Customer’s order for the supply of Goods and/or Services, as set out in the Customer’s purchase order form overleaf and bearing the relevant Purchase Order Number;

**Purchase Order Number**: the Customer’s unique number relating to the supply of Goods and/or Services;

**Recipient:** shall be as defined in clause 16.1;

**Service Specification:** the description of or specification for the Services, as set out in the Purchase Order or as agreed in writing by the Parties;

**Services:** the services to be supplied by the Supplier to the Customer (including, without limitation, any Deliverables) under this Agreement, as described in the Purchase Order or the Service Specification;

**Staff:** all directors, officers, employees, agents, consultants, contractors and/or sub-contractors of the Supplier engaged in the performance of the Supplier’s obligations under this Agreement;

**Supplier:** the person from whom the Customer purchases the Goods and/or Services under this Agreement and who is named as Supplier in the Purchase Order; and

 **Term:** the period from the Commencement Date to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with these Conditions.

2.2 **Interpretation**

In these Conditions (unless the context otherwise requires):

### reference to a clause is a reference to a clause of these Conditions; and clause headings are for information only and do not affect the interpretation of this Agreement;

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

### reference to a **Party** includes its personal representatives (if applicable), successors or permitted assigns;

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

### any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and as if followed by the words “without limitation”, and shall not limit the sense of the words preceding those terms;

### any obligation on either Party not to do or omit to do anything shall include an obligation not to permit that thing to be done or omitted to be done; and

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

**3. Basis of Agreement**

3.1 The Purchase Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier, subject to and in accordance with this Agreement.

3.2 The Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:

3.2.1 the Customer’s receipt of the Supplier’s written acceptance of the Purchase Order (which may take the form of a copy of the Purchase Order countersigned by the Supplier); or

3.2.2 any act by the Supplier consistent with fulfilling the Purchase Order,

provided that one or other of the above shall occur within seven days of the date of the Purchase Order, failing which the Purchase Order shall cease to have effect.

3.3 These Conditions apply to this Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which would otherwise be implied by trade, custom, practice or course of dealing.

3.4 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.

**4Term**

4.1 Subject to acceptance of the Purchase Order by the Supplier in accordance with clause 3.2, this Agreement takes effect on and with effect from the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 0 or terminated in accordance with these Conditions.

4.2 With regard to the provision of the Services, the Customer may extend the Term for a period of up to 6 months (or such other period as the Parties may agree in writing) by giving not less than ten Business Days’ notice in writing to the Supplier prior to the Expiry Date. These Conditions shall apply throughout any such extended period.

***PART A - GOODS***

**5. Supply of Goods**

5.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Customer with the Goods subject to, and in accordance with, this Agreement.

5.2 The Supplier shall supply the Goods in accordance with the Goods Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under this Agreement shall:

5.2.1 correspond with any applicable Goods Specification and, subject thereto, with all other specifications, drawings and descriptions given in quotations, estimates, brochures, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;

5.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982) and fit for any purpose held out by, or made known by the Customer to, the Supplier expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of its obligations under this clause 5.2.2;

5.2.3 be free from defects (manifest or latent) in design, materials and workmanship and remain so for 12 months after delivery; and

5.2.4 comply with all Applicable Laws relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

5.3 In supplying the Goods, the Supplier shall:-

5.3.1 co-operate with the Customer in all matters relating to the Goods, and comply with all the Customer’s instructions; and

5.3.2 obtain and at all times maintain all the licences, permissions, authorisations, consents and permits required to carry out its obligations under this Agreement in respect of the Goods.

**6. Delivery of Goods**

6.1 The Supplier shall:

6.1.1 deliver the Goods to the Customer at the address specified in the Purchase Order (or such other location as instructed by the Customer before delivery), on or by the date of delivery specified in the Purchase Order (or if no such date is specified, then within 28 days of the date of the Purchase Order), during the Customer's normal hours of business on a Business Day; and

6.1.2 ensure that:

1. the Goods are properly packed and secured in order for them to reach their destination in good condition;
2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the relevant Purchase Order Number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), any special instructions regarding their storage or the return of any packaging material for the Goods (which shall be returned at the cost of the Supplier) and, in the case of delivery by instalments or part-delivery, the outstanding balance of Goods remaining to be delivered.

6.2 Delivery of the Goods shall take effect on the completion of unloading of the Goods from the transporting vehicle at the address for delivery and the signature by the Customer of the relevant delivery note. The fact that the Customer provides access to its premises, labour and equipment in connection with the delivery of the Goods shall not amount to acceptance by the Customer of such delivery.

6.3 The Customer shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing, the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings in clause 5.2, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. 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 this Agreement, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

6.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be 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 defect in an instalment shall entitle the Customer to the remedies set out in clause 12.

6.5 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when delivery of the Goods has been completed in accordance with clause 6.2.

**7 Cancellation of Order for Goods**

The Customer shall be entitled, by written notice to the Supplier, to cancel an Order for the Goods, or any part of the Goods, which have not yet been delivered to the Customer provided that the Customer shall pay that part of the Charges for the Goods which, on the date on which the notice of cancellation is deemed served, have been delivered to the Customer or are already in transit, and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt, the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

***PART B - SERVICES***

**8 Supply of Services**

8.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Customer with the Services for the duration of the Term subject to and in accordance with this Agreement.

8.2 In providing the Services, the Supplier shall:

8.2.1 co-operate with the Customer in all matters relating to the Services, and comply with all the Customer’s instructions;

8.2.2 provide the Services with all reasonable skill, care and diligence in accordance with best industry practice in the Supplier’s industry, profession or trade;

8.2.3 use Staff 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 Agreement;

8.2.4 ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

8.2.5 meet any performance dates for the Services specified in the Purchase Order or the Service Specification, or otherwise notified by the Customer to the Supplier;

8.2.6 obtain and at all times maintain all the licences, permissions, authorisations, consents and permits required to carry out its obligations under this Agreement in respect of the Services;

8.2.7 provide all equipment, tools and vehicles and other items required to provide the Services:

8.2.8 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables (and all other goods and materials supplied and used in the Services or transferred to the Customer) will be free from defects in workmanship, installation and design;

8.2.9 comply with all Applicable Laws and, without limitation, all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;

8.2.10 hold all materials, equipment and tools, drawings, specifications, data and other documents supplied by the Customer to the Supplier **(Customer Materials)** in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and

8.2.11 not do or omit anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its activities, and the Supplier acknowledges that the Customer may rely or act on the Services.

8.3 The Customer may, by written notice to the Supplier, at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any such variation, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Parties.

**9. Premises and Equipment**

9.1 To the extent necessary for the purpose of supplying the Services, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises provided that all equipment, tools and vehicles brought onto the Customer’s premises by the Supplier or the Staff shall be at the Supplier’s risk.

9.2 If the Supplier supplies all or any of the Services at or from the Customer’s premises, the Supplier shall, and shall procure that all Staff shall, comply with all the Customer’s security requirements while at those premises; and on completion of the Services or termination or expiry of this Agreement (whichever is the earlier), the Supplier shall vacate the Customer’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services, leave the Customer’s premises in a clean, safe and tidy condition, and make good any damage to the Customer’s premises (or any objects contained on the Customer’s premises) which is caused by the Supplier or any Staff (other than fair wear and tear).

9.3 If the Supplier supplies all or any of the Services at or from its own premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises; and the Supplier shall, and shall procure that all Staff shall, comply with all security requirements specified by the Customer in writing.

9.4 Without prejudice to clause 8.2.7, any equipment provided by the Customer for the purposes of this Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out this Agreement. Without limitation to clause 24, such equipment shall be returned promptly to the Customer on expiry or termination of this Agreement.

9.5 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than fair wear and tear) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within five Business Days.

***PART C – GOODS AND SERVICES***

**10. Charges and Payment**

10.1 The Charges for the Goods:

10.1.1 shall be the price set out in the Purchase Order or, if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

10.1.2 shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods (including, without limitation, the costs of packaging, insurance, carriage, delivery, unloading and stacking unless agreed otherwise in the Goods Specification or in writing by the Customer). No extra charges shall be effective unless agreed in writing by the Customer.

10.2 The charges for the Services shall be set out in the Purchase 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 the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

10.3 All amounts payable by the Customer under this Agreement are inclusive of value added tax (VAT) or any other sales tax chargeable from time to time. Both Parties confirm and agree that, so far as they are aware, no taxable supply for the purposes of VAT or other similar sales tax is to be made under this Agreement.

10.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery; and in respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include all supporting information required by the Customer to verify the accuracy of the invoice (including, without limitation, the relevant Purchase Order Number and a breakdown of the Goods and/or Services provided in the invoice period).

10.5 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the Supplier (to a bank account nominated in writing by the Supplier for the purpose) the invoiced amounts within 30 days after verifying that the invoice is valid and undisputed.

10.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay any undisputed amount. The Supplier shall not suspend the supply of the Goods and/or Services. Any disputed amounts shall be resolved through the dispute resolution procedure set out in clause 26.

10.7 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Supplier to the Customer, whether either liability is present or future, liquidated or unliquidated, including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Agreement and whether or not either liability arises under this agreement or under any other agreement, contract or transaction with the Customer. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or part.

10.8 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 the Customer to inspect such records at all reasonable times on request.

11 Warranties

* 1. The Supplier hereby represents and warrants that:
		1. it has full, clear and unencumbered title to all the Goodsand any goods that are transferred to the Customer as part of the Services (including, without limitation, the Deliverables or any part of them);

* + 1. at the date of delivery of any Goods and any such goods and Deliverables, it shall have full and unrestricted right, power and authority to sell, transfer and deliver the same to the Customer, and the Customer shall acquire a valid and unencumbered title to the Goods and any such goods and Deliverables; and
		2. it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.
1. **Customer Remedies**

12.1 Where (i) the Supplier fails to deliver the Goods (in whole or part) and/or perform the Services by the applicable date or (ii) the Goods or Services in whole or part do not comply with clause 5 or 8, then, without limiting its other rights or remedies, the Customer shall be entitled (whether or not it has accepted the Goods or Deliverables, as the case may be) to:

12.1.1 terminate this Agreement with immediate effect by giving written notice to the Supplier;

12.1.2 reject the Goods (in whole or in part), whether or not title has passed, return them to the Supplier at the Supplier's own risk and expense, and require the Supplier (free of charge) to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid). If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the Charge for the Goods;

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

* + 1. where the Customer has paid in advance for Goods which have not been delivered, and/or Services that have not been provided, by the Supplier, to have such sums refunded by the Supplier;
		2. obtain the same or similar Goods and/or Services from a third party and to recover from the Supplier any expenditure incurred by the Customer in doing so (which shall include, without limitation, administration costs, chargeable staff time and extra delivery costs);
		3. claim damages for any additional costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet the date of delivery or other applicable dates;
		4. request the Supplier, free of charge, to deliver substitute Services within the timescales specified by the Customer; and/or
		5. withhold or reduce payments in the even/t of unsatisfactory performance of the Services.

12.2 These Conditions shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.

12.3 The Customer's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

12.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all liabilities, costs, expenses, damages and losses (including, without limitation, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) awarded against, paid, suffered or incurred by the Customer as a result of or in connection with any claim made against the Customer:

* + 1. 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, to the extent that the claim is attributable to the acts or omissions of the Supplier or its Staff;
		2. by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier or its Staff;
		3. 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 this Agreement by the Supplier or its Staff; and
		4. for damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to the acts or omissions of the Supplier or its Staff.

12.5 Clause 12.4 shall survive termination of this Agreement.

**13. Staff and Key Personnel**

13.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in providing the Goods and/or Services, the Customer may, by giving written notice to the Supplier:

13.1.1 refuse admission of the relevant Staff to the Customer’s premises;

13.1.2 direct the Supplier to terminate the involvement of the relevant Staff in the provision of the Goods and/or Services; and/or

13.1.3 require that the Supplier replace any person removed under this clause 13.1 with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

13.2 The Supplier shall:

13.2.1 ensure that all Staff are vetted in accordance with the Customer’s procedures for the vetting of personnel (as notified to the Supplier from time to time);

13.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer’s premises in connection with this Agreement; and

13.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

13.3 No Key Personnel shall be released from supplying the Services without the prior written consent of the Customer (except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances acceptable to the Customer).

13.4 Any replacements to the Key Personnel shall be subject to the prior written approval of the Customer (such approval not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and shall be suitable to discharge their responsibilities in relation to the Services.

13.5 The Supplier shall be responsible for any necessary insurances, inoculation and immigration permits or visas should it be necessary for Staff to travel outside the Falkland Islands in order to deliver the Services.

**14. Intellectual Property Rights**

14.1 All Intellectual Property Rights in any Customer Materials provided to the Supplier for the purposes of this Agreement shall remain the exclusive property of the Customer provided that the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence for the duration of the Term to use such Customer Materials as required for the sole purpose of enabling the Supplier to perform its obligations under this Agreement.

*Services*

14.2 The Supplier hereby assigns to the Customer (by way of a present assignment of future rights that shall take effect immediately on any such Intellectual Property Rights coming into existence, with full title guarantee and free from all third party rights), all Intellectual Property Rights in any materials (including for the avoidance of doubt the Deliverables) created or developed by the Supplier pursuant to this Agreement or arising as a result of the provision of the Services. The Supplier shall obtain waivers of all moral rights in the products of the Services (including, without limitation, the Deliverables) to which any individual is now or may in the future be entitled under the laws of any jurisdiction.

14.3 The Supplier hereby grants to the Customer a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights (including any modifications to or derivatives of such Intellectual Property Rights):

14.3.1 vested in or licensed to the Supplier on the date of this Agreement; or

14.3.2 created during the Term but which are neither created or developed pursuant to this Agreement nor arise as a result of the provision of the Services,

which the Customer reasonably requires in order to exercise its rights and take the benefit of this Agreement, including the Services provided.

*Goods*

* 1. The Supplier grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all Intellectual Property Rights in the Goods or in any materials accompanying the Goods, to the extent necessary to fulfil its obligations under this Agreement.

14.5 The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Goods or Services and, subject to any statutory obligation requiring the Customer to respond and subject to protecting its own reputation and commercial interests in such manner as it shall think fit, shall permit the Supplier to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require and at the Supplier’s sole expense to dispose of the claim and, subject as aforesaid, shall not make any statement which might prejudice the settlement or defence of the claim.

14.6 The Supplier shall, promptly at the Customer’s request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 14.2.

**15. Governance and Records**

15.1 The Supplier shall:

15.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

15.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

15.2 The Supplier shall keep and maintain until six years after the Expiry Date (or such other period as may be agreed between the Parties), full and accurate records of the Goods and Services supplied, and all payments made by the Customer, pursuant to this Agreement. The Supplier shall, promptly upon request, afford the Customer (or its representatives) with such access to those records as the Customer may reasonably request.

**16. Confidentiality, Transparency and Publicity**

* 1. Subject to clause 16.2, each Party (the Recipient) shall:
		1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party (the **Disclosing Party**); and
		2. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes of discharging this Agreement.
	2. Notwithstanding clause 16.1, a Recipient may disclose the Disclosing Party’s Confidential Information:
		1. where disclosure is required by applicable law or regulatory requirements or by a court or regulatory body of competent jurisdiction;
		2. on a confidential basis, to its auditors or professional advisers;
		3. where the Recipient is the Supplier, to its Staff on a need-to-know basis to enable the Supplier to perform its obligations under this Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 16.2.3 shall comply with the Supplier’s confidentiality obligations under this Agreement as if a party hereto; and
		4. where the Recipient is the Customer:
			+ 1. on a confidential basis to its employees, agents, consultants and contractors;
				2. on a confidential basis to any other governmental or administrative body or any company to which the Customer transfers or proposes to transfer all or any part of its business or activities; or
				3. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
	3. The Supplier hereby consents to the Customer publishing this Agreement in its entirety (including any changes to this Agreement agreed from time to time) in such form as the Customer thinks fit. The Supplier shall not (and shall take reasonable steps to ensure that the Staff shall not) publish or publicise this Agreement (in whole or part) in any way, except with the prior written consent of the Customer.

**17. Protection of Personal Data and Security of Data**

17.1 Where the Supplier is processing Personal Data for the Customer, the Supplier shall:

17.1.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data);

17.1.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under this clause 17;

17.1.3 promptly notify the Customer of:

(a) any breach of the security requirements referred to in clause 17.1.1; and

(b) any request for Personal Data; and

17.1.4 ensure that it does not knowingly or negligently do or omit anything which places the Customer in breach of the Customer’s obligations under this clause 17.

17.2 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

**18. Compliance**

18.1 The Supplier shall promptly notify the Customer of any incident or hazard which may arise in the performance of its obligations under this Agreement which causes any personal injury, damage to property or risk to health and safety.

18.2 The Supplier shall comply with (and shall ensure that its Staff shall comply with):

 18.2.1 the Official Secrets Acts 1911 to 1989 (in their application to the Falkland Islands);

 18.2.2 section 202 of the Taxes Ordinance 1997;

18.2.3 all Applicable Laws and the Customer’s policy (as provided to the Supplier from time to time) relating to equality, diversity and non-discrimination laws; and

18.2.4the Customer’s environmental policy (as provided to the Supplier from time to time).

**19. Prevention of Fraud and Corruption**

19.1 The Supplier shall not offer, give or agree to give, to any person any inducement or reward for doing or having done any act or omission in relation to the obtaining or execution of this Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.

19.2 The Supplier shall comply with all Applicable Laws for the prevention of bribery and corruption (including, but not limited to, the Crimes Ordinance 2014).

19.3 The Supplier shall take all reasonable steps, in accordance with best industry practice, to prevent fraud by its Staff, shareholders, members and directors (“Relevant Persons”) in connection with this Agreement, and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred, is occurring or is likely to occur.

19.4 If the Supplier or its Relevant Persons engage in conduct prohibited by clause 19.1 or commits fraud in relation to this Agreement or any other contract with the Customer, the Customer may:

19.4.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination (including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term); or

19.4.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

**20. Liability**

20.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of, or breach of this Agreement by, the Customer.

* 1. Subject to clauses 20.3 and 20.4:
		1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Agreement, the supply or failure to supply of the Services, misrepresentation, tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed a sum equal to 150% of the Charges paid or payable to the Supplier; and
		2. except in the case of claims arising under clauses 12.4 and 19.4, in no event shall the Supplier be liable to the Customer for any loss of profits, business, revenue, goodwill or savings (whether anticipated or otherwise) and/or any indirect, special or consequential loss or damage.

20.3 Nothing in this Agreement shall be construed to limit or exclude either Party's liability for:

20.3.1 death or personal injury caused by its negligence or that of its Staff;

20.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;

20.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (in their respective applications to the Falkland Islands); or

20.3.4 any other liability which, by law, may not be excluded or limited.

20.4 The Supplier’s liability under clauses 12.4 and 19.4 shall be unlimited.

**21.** **Insurance**

During the Term and for six years following the termination or expiry of this Agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and such other insurance and for such amount of cover as the Customer may specify to cover the liabilities that the Supplier may incur under this Agreement; and shall, promptly on the Customer's request, produce copies of the insurance policies giving details of the insurance cover and the receipt for the current year's premium in respect of each insurance.

**22. Force Majeure**

22.1 Neither Party shall be liable for, or be deemed to be in breach of this Agreement by reason of, any delays or failure in performance of this Agreement which results from any circumstances beyond the reasonable control of the Party affected.

22.2 The Party affected shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so; and shall use reasonable endeavours to mitigate the effect of any such circumstances on the performance of its obligations.

22.3 If such circumstances continue for a continuous period of more than thirty days, either Party may terminate this Agreement by written notice to the other Party.

**23. Termination**

23.1. Without limiting its other rights or remedies, the Customer may terminate this Agreement:

23.1.1 in respect of the supply of Services, at any time by giving to the Supplier not less than thirty days’ prior written notice (or, if the Term is less than three months in duration, not less than ten Business Days’ prior written notice); and

23.1.2 in respect of the supply of Goods (in whole or in part) at any time before delivery or after delivery (where only part of Goods have been delivered), with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Goods provided that the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

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

### commits a material breach of any term of this Agreement which is not capable of remedy or, if remediable, fails to remedy that breach within 30 days of the Customer serving notice on the Supplier to do so;

### repeatedly breaches any term of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

### undergoes a change of control within the meaning of section 130 of the Taxes Ordinance 1997;

### becomes insolvent or unable to pay its debts as they fall due, or (if the Supplier is a body corporate), if an order is made or a resolution is passed for the winding-up of the Supplier (other than voluntarily for the purpose of a solvent amalgamation or reconstruction on terms approved in writing by the Customer) or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 23.2.4) in consequence of debt in any jurisdiction; or (if the Supplier is an individual, partnership or unincorporated association) the Supplier (or one of its partners or members) is the subject of a bankruptcy petition or order;

### if the Supplier is an individual, partnership or unincorporated association, the Supplier (or one of its partners or members) dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

### fails to comply with any Applicable Laws or other applicable legal obligations.

* 1. The Supplier shall notify the Customer as early as practicable prior to any change of control within clause 23.2.3 taking effect and in any event promptly upon any such change of control taking effect.
	2. In any circumstances in which a Party may terminate this Agreement, where both Goods and Services are supplied, that Party may terminate this Agreement in respect of the Goods or Services, and this Agreement shall continue in respect of the remaining supply.
	3. Termination or expiry of this Agreement shall not affect any rights or remedies of either Party that have accrued as at termination, and shall not affect the continuing rights of the Parties under this clause or clauses 4.2, 5, 6.5, 8.2, 10.6 – 10.9, 11, 12, 14, 15.2, 16, 17, 18.2, 19, 20, 21, 23.5, 24, 26 and 30 which shall continue in full force and effect.

24**. Consequences of Termination**

Upon termination or expiry of this Agreement for any reason:-

* 1. no Staff will be deemed to have been transferred to the Customer; and

24.2 the Supplier shall:

### 24.2.1 give all reasonable assistance to the Customer and any incoming supplier of the Services;

### 24.2.2 immediately deliver to the Customer all documents, information, data and equipment belonging to, or provided by, the Customer, all Customer Materials and all Deliverables whether or not then complete. If the Supplier fails to do so, then the Customer may 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 Agreement; and

### 24.2.3 irretrievably delete any information relating to the business of the Customer which is in its possession or under its control.

**25. NOT USED**

**26. Dispute Resolution**

26.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

26.2 If the issue or dispute cannot be resolved by the Parties within one month of having arisen in accordance with clause 26.1, the issue or dispute may be referred by either Party to an independent mediator (the “**Mediator**”) chosen by agreement between the Parties or, in the absence of such agreement within one month of such agreement first being sought, nominated by the Centre of Dispute Resolution in London. The rules of procedure for the mediation shall be determined by the Mediator in consultation with the parties.

26.3 If the Parties fail to agree in writing a resolution of the dispute within one month of the Mediator being appointed, either Party may exercise any remedies it has under the general law.

**27. Notices**

27.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and may be served by personal delivery, prepaid first class post (or prepaid airmail post as appropriate) or, subject to clause 27.3, e-mail. Any notice or communication to:-

* + 1. the Supplier shall be sent to the address of the Supplier set out in the Purchase Order (or such other address as the Supplier may from time to time notify to the Customer in accordance with this clause); or
		2. the Customer shall be sent to the Attorney General of the Falkland Islands, Attorney General’s Chambers, Stanley provided that electronic service on the Attorney General will be valid only once acknowledged, such acknowledgement to exclude automatic read-receipts.

27.2 Notices served in accordance with clause 27.1 shall be deemed received:-

27.2.1 if delivered personally, at the time of delivery;

27.2.2 in the case of prepaid airmail, five Business Days from the date of posting; and

27.2.3 in the case of e-mail, at the time of transmission unless an error message is received,

Provided that if such delivery takes place on a day which is not a Business Day or after 5.00pm on a Business Day, it shall be deemed to occur on the next Business Day.

27.3 Notices under clauses 22 (Force Majeure) or 23 (Termination) may be served by e-mail only if the original notice is then sent to the recipient by personal delivery or prepaid post or airmail in accordance with clause 27.1.

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

**28. Assignment and other dealings**

28.1 The Customer may at any time assign, transfer, mortgage, charge, sub-contract, novate, declare a trust over, dispose of or otherwise deal in any other manner with all or any of its rights or obligations under this Agreement, without the consent of the Supplier.

## 28.2 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, mortgage, charge, sub-contract, novate, declare a trust over, dispose of or otherwise deal in any other manner with all or any of its rights or obligations under this Agreement.

28.3 In granting any consent under this clause 28, the Customer may impose additional terms and conditions.

28.4 Upon any sub-contract by the Supplier, the Supplier shall be responsible for the acts and omissions of its sub-contractor as though such acts and omissions were its own and shall, promptly upon request, provide to the Customer copies of each sub-contract.

28.5 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract provisions having the same effect as clause 10 of this Agreement. For the purpose of this clause 28.5, “sub-contract” means a contract between the Supplier and one or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Supplier’s obligations under this Agreement.

**29. General**

* 1. *Third Parties*: A person who is not a party to this Agreement shall have no right to enforce any of its provisions without the prior written agreement of both Parties.
	2. *Variation*: Without limitation to clause 8.3,this Agreement cannot be varied except in writing signed by a duly authorised representative of both Parties.
	3. *Entire Agreement*: This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
	4. *Waiver*: No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. Any waiver (in whole or part) of any provision of, or right or remedy under, this Agreement shall be valid only if it is notified to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.
	5. *Remedies*: Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy (in whole or part) shall not prevent or restrict the further exercise of that or any other right or remedy.
	6. *No Partnership*: This Agreement shall not constitute or imply any partnership, joint venture, or agency, fiduciary or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
	7. *Invalid Provisions*:If any provision of this Agreement is prohibited by law or is or becomes unlawful, void or unenforceable, the provision 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 shall, to the extent required, be deemed deleted from this Agreement. Any modification or deletion of a provision shall not modify, or affect the validity or enforceability of, the remainder of this Agreement.
	8. *Non fettering*: Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Customer in the exercise of its functions as a public authority; and the rights, powers, duties and obligations of the Customer under any statutes, byelaws, orders, ordinances and regulations shall be exercised by the Customer as fully and effectively as if the Customer was not a party to this Agreement.

30**. Governing law and Jurisdiction**

 This Agreement and all contractual and non-contractual disputes or claims arising out of its terms, validity, construction and performance) shall be governed by, and construed in accordance with, the laws of the Falkland Islands; and, subject to clause 26, each Party irrevocably agrees that the courts of the Falkland Islands shall have exclusive jurisdiction to settle any such dispute or claim.;