

**Tarpey Harris Limited**  
**STANDARD TERMS OF PURCHASE**

**Tarpey Harris Purchase Order Quality Clauses**

**1. ORGANISATION CHANGE NOTIFICATION**

Suppliers are required to notify Tarpey Harris of any change to the organisation (i.e. Management, Facility Location, Process Change, or Changes in Product) and, when required, obtain written approval from Tarpey Harris.

**2. RIGHT OF ACCESS**

Tarpey Harris, the Tarpey Harris Customer, the Customer's Customer, and Regulatory Agencies shall be allowed the right of access to determine and verify the quality of work, records, and material at any place, including the plant of the Supplier.

Upon request by Tarpey Harris Ltd, the Supplier shall provide evidence to demonstrate that their personnel are aware of:

- Their contribution to Product conformity;
- Their contribution to Product safety;
- The importance of competency, qualification and ethical behaviour of their employees.

**3. REQUIREMENTS FLOW DOWN**

Suppliers shall have a quality and calibration system meeting one of the following requirements as applicable: AS9100, ISO 9001. A Supplier evaluation form must be on file at Tarpey Harris prior to acceptance of product. Tarpey Harris reserves the right to approve Suppliers based on requirements and resources.

**4. QUALITY RECORDS**

Quality records must be maintained on file for a minimum of seven (10) years (unless otherwise specified) and readily retrievable upon request.

**5. PRODUCT VERIFICATION**

Verification by Tarpey Harris shall not absolve the Supplier of the responsibility to provide acceptable product, nor shall it preclude subsequent rejections by Tarpey Harris

**6. DOCUMENT CONTROL**

All documentation supplied by Tarpey Harris shall be destroyed upon completion of the contract. Tarpey Harris will not maintain records of documents issued to Suppliers.

**7. APPROVED PROCESSING SOURCES**

Suppliers shall use only end item Customer approved processing sources.

**8. CONTROL OF NONCONFORMING PRODUCT**

Nonconforming product produced from Tarpey Harris provided material will be segregated, tagged, and returned to Tarpey Harris along with completed (Supplier's) internal non-conformance report. Documented cause and corrective action is required.

**9. SUPPLIER DISCLOSURE NOTIFICATION**

(AS9100) Suppliers are required to notify Tarpey Harris on all known non-conformities, which have already shipped to Tarpey Harris and/or Tarpey Harris's customers. Notification shall be timely and in writing. If a Tarpey Harris customer contacts the Supplier directly on a non-conformance issue, the Supplier shall notify Tarpey Harris in a timely manner and supply Tarpey Harris with all the same data/information supplied to Tarpey Harris's customer.

**10. HANDLING, PACKAGING, PRESERVATION, AND DELIVERY**

The Supplier shall use appropriate methods of handling, packaging, and preservation to prevent damage of product in process and during delivery.

**11. STATISTICAL TECHNIQUES**

When required Tarpey Harris contract, the Supplier shall perform statistical analysis for applicable key characteristics and provide results upon Tarpey Harris's request or Tarpey Harris's customer's request.

**12. EVIDENCE OF INSPECTION**

A qualified representative of the Supplier's Quality Department shall sign and document acceptance status for each shipment as evidence of 100% inspection. Sampling inspection shall not be performed without prior written approval from Tarpey Harris and Tarpey Harris's customer.

**13. FIRST ARTICLE REQUIREMENTS**

A completed Tarpey Harris inspection report/record form (AS9102) or equivalent, meeting the requirements of AS9102, shall be provided with the first shipment as evidence of 100% inspection of one each part from the first shipment. Delta first articles shall be performed for all minor configuration changes; if a configuration change modifies a part in excess of 30% of the dimensions, a new first article shall be performed. Suppliers with contracts that have been novated or assigned to Tarpey Harris by their customer shall provide a copy of the first article report matching the current configuration, with the first shipment.

**14. MATERIALS SUPPLIERS**

Material supplied against this contract must be purchased from approved sources of the end item users (Tarpey Harris's Customer).

**15. NON-DOMESTIC MATERIAL SUPPLIERS**

Non-Domestic material supplied against this contract must be purchased from approved sources of the end item users (Tarpey Harris's Customer).

**16. COUNTERFEIT**

The Supplier shall ensure that Counterfeit Product is not delivered to Tarpey Harris Ltd. In fulfilling its obligations under the Purchase Order, the Supplier shall only purchase goods to be delivered or incorporated as Product to Tarpey Harris Ltd directly from the organisation that is the originating source for the production of legitimate components or equipment. Product shall not be acquired from distributors that are independent from the originating organisation's authorised distribution chain, without written approval from Tarpey Harris Ltd.

The Supplier shall as soon as practicable notify Tarpey Harris Ltd if the Supplier becomes aware or suspects that it has acquired Counterfeit Product. When requested by Tarpey Harris Ltd, the Supplier shall provide documentation that authenticates traceability of the affected Products to the organisation that is the originating source for the production of legitimate components, goods or equipment.

In the event that Product delivered under the Purchase Order constitute or include Counterfeit Product, the Supplier shall, at its expense promptly replace such Counterfeit Product with genuine Product conforming to the requirements of the Purchase Order. Notwithstanding any other provision in the Purchase Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Product, including without limitation Tarpey Harris Ltd.'s costs of removing Counterfeit Product, of reinserting replacement Product and of any testing necessitated by the reinstallation of Product after Counterfeit Product has been exchanged.

**17. FOREIGN OBJECT DEBRIS/DAMAGE**

The Supplier shall maintain a Foreign Object Debris/Damage ("FOD") prevention program including:

- A review of manufacturing processes to identify and eliminate foreign object entrapment;
- Tarpey Harris Ltd.'s right to perform FOD prevention program audits;
- Periodic self-audits of the Supplier's internal FOD prevention practices; and
- Provision of periodic FOD training to the Supplier's employees.

**The Following Terms & Conditions Apply To This Contract**

**1 Introduction**

**1.1** This Agreement is made between the Tarpey Harris Limited, ("Tarpey Harris") identified in the Purchase Order attached to these this Agreement ("The Purchase Order") and the Supplier (the "Supplier") under which Tarpey Harris agrees to purchase the goods or services which the Supplier will provide or perform (together the "works"). No variation or addition to these terms and conditions will form part of this Agreement unless made or specifically accepted by Tarpey Harris in writing.

**1.2** This Agreement will override and take the place of any other terms or conditions contained in any document or other communication used by the Supplier.

**1.3** The benefit (subject to the burden) of an order placed under this Agreement be taken by any company in the Tarpey Harris group of companies and these terms and conditions may be enforced by any of them, in each case either as principal or as the duly authorised agent for any of the other companies. This is done to assist effective processing and administration and does not in any way affect the Supplier's rights.

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- 2 Works**
- 2.1** The work shall be provided in the quantities, by the times and at the locations agreed with Tarpey Harris in writing and Tarpey Harris shall not be obliged to accept any incomplete delivery or any work in excess of the amounts ordered.
- 2.2** The Supplier shall be the non-exclusive supplier of the work to Tarpey Harris.
- 2.3** Unless specifically provided for, the Supplier shall ensure that the works are fully compatible with Tarpey Harris's equipment or property.
- 2.4** The Supplier acknowledges that Tarpey Harris relies on the skill and judgment of the Supplier in the supply of the works and the performance of its obligations under the Agreement.
- 2.5** The Supplier shall not depart from the Agreement unless the Supplier has obtained Tarpey Harris's written approval. The Supplier shall make any reasonable amendments to the work required by Tarpey Harris and, unless agreed in writing by Tarpey Harris, any such amendments shall not increase the price.
- 2.6** Where the Supplier is to provide formal progress reports to Tarpey Harris under the Agreement, the Supplier shall provide such reports at the times and in such form as may be specified or as otherwise requested by Tarpey Harris. The submission and acceptance of progress reports shall not prejudice the rights of Tarpey Harris under any other provision of the Agreement.
- 2.7** The Supplier shall be deemed to have satisfied itself as regards the nature and extent of the work, including but not limited to the time necessary to complete the work, access to the location(s) where the work is to be provided or performed, and the personnel and equipment necessary to provide or perform the work.
- 2.8** The Supplier shall supply, where relevant and appropriate, a certificate of conformance with any relevant specification confirming conformance with all appropriate regulatory approvals and health and safety requirements.
- 3 Delivery, Inspection, Installation and Testing**
- 3.1** Unless otherwise stated in the Purchase Order, where the works are to be delivered by the Supplier, the point of delivery shall be when the works are removed from the transporting vehicle at the location specified. The Supplier shall off-load the goods as directed by Tarpey Harris and, unless agreed otherwise, delivery shall be during Tarpey Harris's normal working hours. Where the works are to be collected by Tarpey Harris, the point of delivery shall be when the works are loaded onto Tarpey Harris's transporting vehicle.
- 3.2** Delivery will be deemed to be incomplete if the Supplier fails to provide Tarpey Harris with all documentation or training necessary for the safe and proper operation or intended use of the work.
- 3.3** The issue by Tarpey Harris of receipt note for the works shall not constitute any acknowledgment of the condition, quantity or nature of the works.
- 3.4** The Supplier must ensure all goods delivered as part of the work are suitably packaged and marked in a proper manner and in accordance with any Tarpey Harris instructions and statutory requirements and any requirements of the carriers. Tarpey Harris shall not be obliged to return any packaging materials for any goods whether or not they are accepted by Tarpey Harris.
- 3.5** Except where otherwise provided for, delivery shall include the unloading, stacking, installation and/or testing of the works by the Supplier or the Supplier's suppliers or carriers at such place as Tarpey Harris or a duly authorised person shall reasonably direct.
- 3.6** If the work requires the carrying out of tests, the instalment of works or delivery of training, delivery shall not be deemed to be complete until such tests have been passed, works installed, or training delivered to Tarpey Harris's unconditional satisfaction and the Supplier shall provide Tarpey Harris upon request of with copies of all test reports and all data discovered as a result of testing.
- 3.7** If Tarpey Harris installs any work supplied to it, the Supplier shall supply in advance of delivery a functional description of each part of the work, together with sufficient drawings and instructions to allow Tarpey Harris to install, operate and maintain the work including details of any special environmental controls required to ensure that the work meets any relevant specification.
- 3.8** Where the Purchase Order specifies the time of performance or delivery of the work, time for such performance or delivery shall be of the essence.
- 3.9** The Supplier shall notify Tarpey Harris if any delivery or performance is likely to be delayed beyond the date specified in the Purchase Order. If the Purchase Order provides for the payment of liquidated damages for delays in performance or delivery, then these shall apply. If not, then the provisions of Clause 3.10 shall apply.
- 3.10** Failure by the Supplier to notify any likely delay shall entitle Tarpey Harris to terminate without liability all or part of the order. Tarpey Harris shall also be entitled to compensation for any direct losses resulting from such failure and delay. If any delay which is notified does or is likely to exceed 30 days, Tarpey Harris shall be entitled to terminate without liability on its part all or part of the order and/or (unless the delay is due to Force Majeure) to compensation for any resulting direct losses.
- 3.11** In addition to any other right Tarpey Harris may have under this Agreement or any other contract between it and the Supplier, it shall be entitled to postpone the date of delivery or performance for whatever period it thinks fit upon giving notice in writing to the Supplier. The Supplier shall not make any additional charges for providing or performing the work where Tarpey Harris exercises this right, unless the Supplier can demonstrate to the reasonable satisfaction of Tarpey Harris, providing supporting evidence, that such additional charges are unavoidable.
- 3.12** If the work is delivered or performed in instalments, Tarpey Harris may treat the Agreement either as a single contract and not severable, or it may elect to terminate the whole of any unfulfilled part of the Agreement without any further liability to the Supplier.
- 3.13** The Supplier shall liaise with Tarpey Harris (and any third parties designated by Tarpey Harris) regularly and at such intervals as Tarpey Harris may request in connection with the work. The Supplier shall provide Tarpey Harris's nominated representative(s) with access to observe performance of the work at all key stages in their development.
- 3.14** If an inspection by Tarpey Harris at any time after delivery by the Supplier establishes that all or any part of the work supplied does not comply with all the requirements of the Agreement, Tarpey Harris may (without limitation) reject the work supplied, return it to the Supplier and require replacement or rectification, or require reperformance of the work and in each case recover its losses, costs and expenses from the Supplier.
- 3.15** If the Supplier fails to complete delivery of any works in accordance with this Agreement for any other reason than Force Majeure, without prejudice to any other right and remedies it may have, Tarpey Harris shall be entitled to:
- (a) Require the Supplier to remedy such defect at its own cost within 7 days (in which case the Supplier shall also be liable to Tarpey Harris for any costs arising out of any damage caused by the Supplier in remedying such defects and shall also provide free of charge any additional works necessary to remedy the works); and/or
  - (b) Charge to the Supplier the costs incurred by Tarpey Harris in having such defects remedied; and/or
  - (c) Cancel and works which have not been delivered by the date required and require repayment of any part of the price which has been paid; and/or
  - (d) Charge to the Supplier any additional costs, losses or expenses which Tarpey Harris may incur due to the Supplier's failure to deliver the correct works by the specified date including, but not limited to, any additional costs incurred by Tarpey Harris in obtaining any replacement works from a third party and any payments contractually due to third parties as a result of the works not being so provided by the specified delivery date.
- 4 Price and Payment**
- 4.1** The price for the work shall be as set out or described in the Purchase Order. The price shall be exclusive of VAT but inclusive of all other, taxes, charges and expenses including packaging, shipping, carriage, insurance, testing and delivery of the Goods to the delivery address and any duties, imposts or levies. The price will be fixed unless otherwise indicated. No increase in price may be made (whether on account of increased material, labour or transport costs, fluctuations in exchange rates, legislative or regulatory changes, or otherwise) without the prior written consent of Tarpey Harris. Tarpey Harris shall be entitled to any discount of prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.
- 4.2** Unless specified otherwise, the Supplier shall invoice Tarpey Harris at any time after the later of the due date for completion of the work and the actual date of such completion. The invoice shall include the period to which the charges relate, the contact name at Tarpey Harris, a description of the work to which the invoice relates, a valid Tarpey Harris Purchase Order number and such other information as Tarpey Harris may reasonably require.
- 4.3** Tarpey Harris shall not be obliged to pay and/or consider any invoice that does not quote a valid Tarpey Harris Purchase Order number or is received more than ninety (90) days after the works have been delivered or services completed.

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**4.4** Unless otherwise provided, or where the invoice is disputed by Tarpey Harris, payment shall be made within 60 days from the end of the month of receipt of invoice.

**4.5** If Tarpey Harris has agreed to reimburse the Supplier for expenses incurred in the performance of the work then the Supplier shall provide receipts or such other evidence as Tarpey Harris may require to support any claim for such expenses.

**4.6** Without prejudice to any other right or remedy Tarpey Harris may have, Tarpey Harris reserves the right to set off any amount owing at any time by the Supplier to Tarpey Harris, whether under this Agreement or any other agreement which may exist from time to time between them, against any amount payable by the Supplier to Tarpey Harris under this Agreement.

**4.7** Tarpey Harris shall deduct the cost of any works which are returned by Tarpey Harris from the next payment due to the Supplier. Where the return of any works put the Supplier into a debt position and Tarpey Harris is unable to deduct the balance from a payment due, Tarpey Harris will issue a debit note and shall require settlement of the debit note by the Contactor within 14 days of the date of the debit note.

**4.8** The Supplier shall not suspend the supply of the works unless the Supplier is entitled to terminate the Agreement for failure to pay undisputed sums of money. Interest shall be payable on any amount payable under this Agreement which is not paid by the due date for its payment. Such interest shall accrue and be calculated on a daily basis at the rate of 3% per annum above the base rate as set by the Bank of England.

**4.9** The Supplier shall keep proper accounts and records, including all receipts, for all charges and expenses relating to the Agreement. Such accounts, records and receipts shall be retained by the Supplier for at least 3 years following the termination of the Agreement.

**4.10** The Supplier shall permit Tarpey Harris, its employees, nominated representatives and independent auditor to examine on request at all reasonable times such accounts, records and receipts as are to be kept by the Supplier under Clause 4.9. Such examination shall be permitted at the offices of the Supplier or at such other places where they may be kept. The Supplier shall permit Tarpey Harris, its employees, nominated representatives and independent auditors to take copies of such accounts, records and receipts and shall promptly provide proper explanations to any questions raised relating to the contents of these.

**4.11** The Supplier shall indemnify Tarpey Harris on a continuing basis against any liability, including interest, penalties or costs incurred which is levied, demanded or assessed on Tarpey Harris at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Agreement. Any amounts due under this clause.

**4.12** shall be paid to the Supplier to Tarpey Harris not less than 5 days before the date upon which the tax or other liability is payable by Tarpey Harris.

#### **5 Variations**

**5.1** The Supplier shall accept any reasonable variation to the specification for the work requested by Tarpey Harris. The price shall be adjusted and agreed in writing by Tarpey Harris to reflect the variation having regard to the rates and prices used in the Agreement or, where these are not relevant, to what is fair and reasonable.

**5.2** Neither Party shall be bound by any variation to the Agreement unless and until it is confirmed in a variation to the Purchase Order signed by authorised representatives of each Party.

#### **6 Intellectual Property**

**6.1** The Supplier hereby assigns absolutely by way of present and (to the extent permissible by law) future assignment with full title guarantee all intellectual property rights which are created by the Supplier or on the Supplier's behalf as part of the work. The Supplier may use those intellectual property rights only as properly and reasonably required in connection with the supply of the work for Tarpey Harris.

**6.2** The Supplier grants Tarpey Harris a non-exclusive, worldwide, perpetual, transferable, royalty-free licence (including the ability to grant sub-licences) in respect of all intellectual property rights in the work and which do not belong to Tarpey Harris under Clause 6.1.

**6.3** The Supplier shall obtain all releases, waivers and authorisations throughout the world necessary for Tarpey Harris to make full and free use of the work.

**6.4** The Supplier shall and shall procure that the Supplier's agents, employees and sub-Suppliers shall execute any documents or do anything else reasonably required by Tarpey Harris to vest in and transfer to Tarpey Harris (and maintain, defend, enforce) those intellectual property rights referred to in Clause 6.1, to

secure the licences referred to in Clause 6.2 and to confirm those releases, waivers and authorisations referred to in Clause 6.3.

**6.5** The Supplier shall not use or permit the use of any of the intellectual property belonging to Tarpey Harris (or Tarpey Harris's licensors), including without limitation logos or other intellectual property rights without the prior written agreement of Tarpey Harris.

**6.6** The Supplier will indemnify and hold Tarpey Harris harmless against any damages (including costs) that may be awarded or agreed to be paid in respect of any claim or action that any work supplied by the Supplier infringes any intellectual property right of any third parties.

#### **7 Hazardous Goods**

**7.1** If any work to be provided or performed under the Agreement involves the use of any hazardous substances or requires any special precautions to be taken to ensure safety in handling, transport, storage or use, the Supplier shall prior to delivery furnish Tarpey Harris with written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked or securely attached to any containers into which they are packed.

**7.2** In particular (but without limitation) the Supplier shall provide to Tarpey Harris in writing all such data, instructions and warnings as are required to comply with applicable legislation relating to health and safety and shall indemnify Tarpey Harris against any and all liabilities, claims and expenses which may arise as a result of the Supplier failure to do so.

#### **8 Ownership and Risk**

**8.1** The risk and title in any goods which form all or part of the work shall pass to Tarpey Harris when delivered and the time of delivery shall be determined in accordance with clauses 2 and 3.

#### **9 Warranties**

**9.1** The Supplier warrants that all of the work supplied by it under the Agreement:

- (a) will be in full accordance with any specification with which Tarpey Harris may provide the Supplier with from time to time;
- (b) will be provided in accordance with the required service levels or key performance indicators (if any) set out or referred to in writing by Tarpey Harris;
- (c) will not infringe any intellectual property rights or other rights of any third party anywhere in the world;
- (d) will be provided by appropriately qualified and trained personnel with all due skill, care and diligence and to such standards of quality and or/specifications stated in the Purchase Order or (if none are so stated) as it is reasonable for Tarpey Harris to expect from the Supplier;
- (e) will be of satisfactory quality and will be fit for any purpose stated by Tarpey Harris prior to the date when the Purchase Order is signed, or held out by the Supplier;
- (f) will be free from all defects in design, material and workmanship; and
- (g) will correspond with any samples provided.

**9.2** In supplying the work the Supplier shall (and shall procure that the Supplier's agents, employees and sub-Suppliers shall) comply with, and the Supplier shall ensure that the work complies with, all applicable laws, standards, codes of practice (whether voluntary or mandatory), statutory requirements or other regulations and with such of Tarpey Harris's standard policies and procedures as Tarpey Harris may issue to the Supplier from time to time.

**9.3** If the Supplier is not the manufacturer and if required by Tarpey Harris the Supplier shall assign the benefit of any warranty or guarantee given by the manufacturer or the Supplier's supplier relating to the works.

**9.4** Where any works supplied under this Agreement are the subject of a guarantee and if within the relevant guarantee period Tarpey Harris gives notice in writing to the Supplier of any defect in the design, materials or workmanship of the works (other than a design made, furnished or specified by Tarpey Harris for which the Supplier has in writing disclaimed responsibility), the Supplier shall, as soon as possible, replace or repair (at Tarpey Harris's sole option, acting reasonably) the relevant works so as to remedy the defects without cost to Tarpey Harris, provided that Tarpey Harris shall, where practicable, within a reasonable period of time of discovery of any defect, return the defective works or parts of them to the Supplier at the Supplier's risk and expense unless it has been agreed between the parties that the necessary replacement or repair shall be carried out by the Supplier on Tarpey Harris's premises.

**9.5** The liabilities of the Supplier under this clause 9 shall be in addition and without prejudice to any other rights or remedies of Tarpey Harris (whether arising in contract, tort, at common law, under statute or otherwise).

#### **10 Personnel**

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**10.1** Tarpey Harris reserves the right to refuse access to any premises controlled by Tarpey Harris to any person employed by the Supplier or any sub-Supplier whose admission would in the opinion of Tarpey Harris be undesirable.

**10.2** If and when directed by Tarpey Harris the Supplier shall provide lists of the names and addresses of all persons who may at any time require permission to access any premises controlled by Tarpey Harris in connection with the performance of the Agreement. The Supplier shall also specify the capacities in which such employees are concerned with the Agreement and provide such other particulars as Tarpey Harris may reasonably require.

**10.3** The decision of Tarpey Harris on whether any person is to be refused admission to any premises under its control and on whether the Supplier has complied with the obligations set out in Clause 10.2 shall be final and conclusive.

**10.4** The Supplier shall be responsible for any income tax, national insurance contributions or other statutory payments in relation to any and all individuals employed or engaged in the provision of the work from time to time (the "Employees") and will ensure that they are deducted and/or paid to the relevant authorities. The Supplier shall indemnify Tarpey Harris against all demands, claims, actions, proceedings, damages, payments, losses, costs, expenses or other liabilities (together "Losses") arising out of any claim or assertion that any Employee is or was an employee, servant or workers of Tarpey Harris by reason of being engaged in the work or arising out of any act or omission of the Supplier or any of the Supplier's sub-Suppliers, employees or agents in relation to any Employee.

**10.5** At any time during the continuance of the Agreement Tarpey Harris may require the Supplier to provide to Tarpey Harris (or any other person nominated by Tarpey Harris) within 14 days, such information as Tarpey Harris or Tarpey Harris's nominee may reasonably require in connection with the employment or engagement of the Employees. This Clause 10.5 is without prejudice to Clause 10.6 below.

**10.6** The Supplier will procure that there will be no transfer of employment of any of the Employees to Tarpey Harris or any person who provides services to Tarpey Harris (a "Future Service Provider") following the termination of the Agreement or the termination of the provision of any of the work by the Supplier (directly or indirectly) and on or prior to any such termination the Supplier shall ensure that all Employees are redeployed elsewhere in the Supplier's or the Supplier's sub-Suppliers' business or are dismissed at the Supplier's expense.

**10.7** The Supplier shall indemnify Tarpey Harris (for Tarpey Harris's benefit and that of any Future Service Provider) and hold Tarpey Harris harmless against all Losses incurred by Tarpey Harris and/or any Future Service Provider by virtue of the operation or alleged operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of the Agreement or termination of the provision of any of the work (including any dismissal or alleged dismissal of any Employee by Tarpey Harris or a Future Service Provider).

**10.8** The Supplier acknowledges that the Key Personnel of the Supplier listed or referred to in the Purchase Order are essential to the proper provision of the work to Tarpey Harris. The Key Personnel shall not be released from supplying the work without Tarpey Harris's prior written agreement, except where this is unavoidable because of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

**10.9** Any replacements to the Key Personnel shall be subject to Tarpey Harris's prior written agreement. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the work.

**11 Tarpey Harris Property**

**11.1** Any property which is issued by or on behalf of Tarpey Harris to the Supplier in connection with the Agreement shall remain the property of Tarpey Harris and shall be used solely in connection with the Agreement and not for any other purpose without the prior written agreement of Tarpey Harris.

**11.2** All Tarpey Harris property shall be deemed to be in good condition when received by or on behalf of the Supplier unless it notifies Tarpey Harris to the contrary within 7 days of the date it receives such property. The Supplier shall return such property promptly to Tarpey Harris on completion of the work and it shall be responsible for all loss or damage caused to such property from whatsoever cause.

**11.3** The Supplier may be permitted to use accommodation provided by Tarpey Harris. Such accommodation shall be used purely for the purposes of providing the work. It shall be kept clean and not damaged in any way. The Supplier shall also pay for any services made available to the accommodation and used by the Supplier including but not limited to electricity, water and telephone lines. It

shall immediately vacate the accommodation when instructed to do so by Tarpey Harris. The accommodation shall be left in a clean and tidy condition and in a state of repair equivalent to that it was in when the Supplier was initially given access.

**12 Indemnity**

**12.1** Neither party excludes or limits liability to the other party for:

- (a) death or personal injury caused by its negligence; or
- (b) fraud or fraudulent misrepresentation.

**12.2** The Supplier shall indemnify Tarpey Harris fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities that may arise out of, or in connection with:

- (a) The performance or non-performance of the Supplier of its obligations under this Agreement or the presence of any Supplier or any staff on Tarpey Harris's premises;
- (b) any act or omission or negligence of the Supplier (including the Supplier's employees, agents and sub-Suppliers) in supplying, installing, testing, commissioning or performing the works;
- (c) any breach of any warranty given by the Supplier in relation to the works including but not limited to the warranties set out in clause 9;
- (d) any liability Tarpey Harris might incur under the Consumer Protection Act 1987 or General Product Safety Regulations 2005 in respect of the works or any other items in which the works are incorporated; and
- (e) any liability to any third party arising in connection with the work which Tarpey Harris may incur whether by court proceedings or by a bona fide out-of-court settlement.

**12.3** The Supplier shall not be liable to Tarpey Harris for any damage or injury to the extent that the same is caused by or arises out of Tarpey Harris's negligent acts or omissions.

**12.4** The Supplier shall be liable for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct breach of the Agreement by the Contactor.

**13 Insurance**

**13.1** The Supplier shall effect and maintain with a reputable insurance company of good repute the following policies of insurance providing cover consistent at least with the best industry practice of suppliers of work of the type to be supplied by the Supplier to Tarpey Harris, in amounts of not less than those stated below for any claim or series of related claims, for the period over which the Agreement is to be performed and for a minimum of 6 years following expiration or earlier termination of the Agreement:

- (a) Employers liability insurance of not less than £5 million or the minimum level required by law;
- (b) Public liability insurance of not less than £5 million or the minimum level required by law;
- (c) Product liability insurance of not less than £5 million or the minimum level required by law;
- (d) Professional indemnity insurance of not less than £2 million or the minimum level required by law.

**13.2** The Supplier shall promptly provide to Tarpey Harris copies of all insurance policies referred to in Clause 13.1 or a broker's verification of insurance to demonstrate that such insurances are in place, together with copies of receipts or other evidence of payment of the latest premiums due under those policies.

**14 Termination**

**14.1** Tarpey Harris may terminate all or any part of the Agreement without any liability immediately by notice to the Supplier in the following circumstances:

- (a) if the Supplier breaches any term of the Agreement and (where in Tarpey Harris's reasonable opinion the breach can be remedied without any delay to the time for supply under Clause 3) fails to remedy the breach by that time for performance or (if earlier) within 7 days of Tarpey Harris so requiring; or
- (b) if the Supplier ceases to or threatens to cease to carry on business, the Supplier's financial position is such that either the Supplier, the Supplier's directors, members or creditors as appropriate take or are entitled to take steps to institute formal insolvency proceedings with respect to the Supplier of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) if the Supplier offers or gives, or agrees to give, to any employee, agent or representative of Tarpey Harris any gift, inducement or consideration of any kind in connection with this Agreement or any other agreement with Tarpey Harris,

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or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement.

**14.2** Without prejudice to its rights under Clause 14.1, Tarpey Harris shall have the right to terminate the Agreement at any time on giving the Supplier at least one (1) month's notice in writing.

**14.3** Where Tarpey Harris terminates the Agreement under Clause 14.2, it shall compensate the Supplier for any unavoidable commitments, liabilities or expenditure which the Supplier properly incurs by reason of the termination of the Agreement, provided the Supplier takes all reasonable steps to mitigate such losses. This shall not include the loss of any anticipated profits. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by it as a result of termination under Clause 14.2.

**14.4** Tarpey Harris shall not be liable under Clause 14.3 to pay any sum which:  
(a) was claimable under insurance held by the Supplier, and it has failed to make a claim on such insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or  
(b) when added to any sums paid or due to it under the Agreement, exceeds the total sum that would have been payable to the Supplier if the Agreement had not been terminated prior to the expiry of the original contract period.

**14.5** Clauses 6, 10 and 15, shall survive termination of this Agreement.

**14.6** If the Agreement is terminated for any reason all rights granted to the Supplier under this Agreement will immediately terminate.

**15 Confidentiality**

**15.1** For the purposes of this Clause 15, "Confidential Information" means any information which has been designated as confidential by Tarpey Harris in writing or which because of its content ought to be considered as confidential (however it is conveyed or on whatever media it is stored), information the disclosure of which would, or would be likely to, prejudice the interests of Tarpey Harris, its trade secrets, intellectual property rights or know-how and all personal data and sensitive data within the meaning of the Data Protection Act 1998, but does not include any information:

- (a) which was public knowledge at the time of disclosure (otherwise than by breach of this Clause 15);
- (b) which was in the possession of the Supplier, without restriction on its disclosure, before receiving it from Tarpey Harris;
- (c) which is received from a third party (who lawfully acquired it) without restriction on its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**15.2** The Supplier shall:

- (a) treat all Confidential Information belonging to Tarpey Harris as confidential and shall use its best endeavours to prevent its staff from making any disclosure to any person of any such confidential information; and
- (b) not disclose any Confidential Information belonging to Tarpey Harris to any other person without the prior written consent of Tarpey Harris, except to such persons and to such extent as may be necessary for the performance of the Supplier's obligations under the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

**15.3** The Supplier shall ensure that its staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Agreement.

**15.4** The Supplier must not use any Confidential Information it receives from Tarpey Harris otherwise than for the purposes of the Agreement.

**15.5** If the Supplier fails to comply with Clauses 15.1 - 15.4 Tarpey Harris reserves the right to terminate the Agreement with immediate effect by notice in writing.

**15.6** In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of work under the Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

**15.7** Without prejudice to the preceding provisions of this Clause 15, the Supplier shall not (and shall ensure that its employees, agents and sub-Suppliers shall not) make, or permit any person to make, any statements or responses to public, media or official enquires concerning this Agreement or the work without prior written consent of Tarpey Harris.

**16 Force Majeure**

**16.1** Tarpey Harris shall have no liability to the Supplier, or be deemed to be in breach of the Agreement, as a consequence of any of the following events, where the event is outside Tarpey Harris's reasonable control:

- (a) flood, storm, severe weather conditions or other natural events;
- (b) war, terrorist action, hostilities, revolution, riot or civil disorder;
- (c) any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records) unless by an act or omission of Tarpey Harris's employees, agents or sub-Suppliers;
- (d) the introduction of, or any amendment to, a law or regulation, or any change in the interpretation or application by any authority;
- (e) any strike, lockout or other industrial action;
- (f) any obstruction of any public or private highway or road or any event which prevents or obstructs access to the location;
- (g) any breach of contract or default by, or insolvency of, a third party (including an agent or sub-Supplier) other than a company in the Tarpey Harris group of companies or an officer or employee of Tarpey Harris or of the group company; or
- (h) any other event outside Tarpey Harris's reasonable control, whether similar or not to any of the foregoing.

**17 Assignment and Sub contracting**

**17.1** The Supplier shall not transfer the Agreement or any of its rights, liabilities or obligations nor shall the Supplier sub-contract any of its obligations under it, whether in whole or in part, without first obtaining Tarpey Harris's prior written consent. Such consent, if granted shall not release the Supplier from any of its obligations and liabilities which may exist under this Agreement from time to time.

**18 General**

**18.1** Tarpey Harris engages the Supplier as an independent Supplier. Nothing in this Agreement shall create a partnership or the relationship of principal and agent or employer and employee.

**18.2** Unless otherwise permitted by this Agreement, each party shall bear its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement and any documents referred to in it.

**18.3** If any provision of the Agreement is found by any court or administrative body or competent jurisdiction to be invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

**18.4** A waiver of Tarpey Harris's rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, power or remedy available to that party and the rights, powers and remedies shall be cumulative.

**18.5** All notices which are required to be given under the Agreement shall be in writing and shall be sent to the address of the recipient set out in the Purchase Order or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 18.

**18.6** Notices may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched. A notice required under this Agreement shall not be validly given if sent by email.

**18.7** Headings to Clauses are for ease of reference only and shall not affect the interpretation or construction of this agreement.

**18.8** The Agreement constitutes the entire understanding between Tarpey Harris and the Supplier and supersedes all previous agreements between the parties relating to its subject matter. The Supplier has not relied on any representation or promise except as expressly set out in this Agreement. Nothing in this clause shall limit or exclude liability for fraud.

**18.9** For the purposes of Section 1(2) of the Contracts (Rights of third Parties) Act 1999 the parties state that, save as set out in this Agreement, they do not intend any term of the Agreement to be enforced by third parties.

**18.10** This Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and, subject to Clause 19, the parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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**18.11** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

**19 Dispute Resolution**

**19.1** If any dispute arises in connection with the Agreement (a "Dispute"), an authorised representative of the Supplier and Tarpey Harris shall, within 30 days of a written request from one party to the other, meet in good faith to resolve the Dispute.

**19.2** If the Dispute remains unresolved either the Supplier or Tarpey Harris may refer it to mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure that is in force at the date of the referral. Unless otherwise agreed between the Supplier and Tarpey Harris, the mediator will be nominated by CEDR. To initiate the mediation either party may give notice in writing (the "Mediation Notice") to the other requesting a mediation. A copy of the request will be sent to CEDR. The mediation will start not later than 60 days after the date of the Mediation Notice.

**19.3** The following principles shall apply to the mediation:

- (a) unless the Supplier and Tarpey Harris otherwise agree, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of either party in any future proceedings;
- (b) if the Supplier and Tarpey Harris reach agreement on the resolution of the Dispute, the agreement shall be recorded in writing and binding on them once it is signed by duly authorised representatives of both parties;
- (c) failing agreement, the Supplier and Tarpey Harris may invite the mediator to provide a non-binding but informative written opinion if the parties provide consent to this in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both parties.

**19.4** If the parties fail to reach agreement by the conclusion of the mediation then the parties shall be free to commence formal legal proceedings in the courts in relation to the Dispute.

**19.5** Nothing in this Clause 19 shall prevent a party seeking urgent relief from the courts where it considers this is necessary to protect its position.