

Standard Terms & Conditions for the Purchase of Goods & Services

Definitions	
D&A	Design & Analysis Limited
Contractor	The party providing Goods and/or Services to D&A as identified in the Purchase Order.
Purchase Order	The order document issued by D&A setting out the details of its requirements.
Representative	The authorised individual identified on the Purchase Order.
Parties	Each party entered into the Purchase Order contract.
Goods	Any such goods as are to be supplied by the Contractor (or by the Contractor's sub-contractor) under the Agreement as specified in the Purchase Order.
Services	The services to be provided as specified in the Purchase Order.
Approval & approved	The written consent of D&A's Contract Manager, such consent to only be acceptable in the form of email where expressly permitted in this Agreement.
D&A Property	Any property, other than real property, issued or made available to the Contractor by D&A in connection with the Purchase Order.
Charges	The charges set out in the Purchase Order.
Confidential Information	All information (whether written, oral or by another means and whether directly or indirectly) relating to the disclosing party ("Disclosing Party") whether created before or after the date of this Purchase Order including, without limitation, information relating to the Disclosing Party's: (i) Intellectual Property Rights, personal data, software, products, systems, operations, processes, plans or intentions, product information, know-how and market opportunities; and (ii) business, identity and affairs and the business, identity and affairs of its directors, officers, employees, customers and potential customers, suppliers, agents, or sub-contractors and the like, which comes into the possession of the other party ("Receiving Party") and any market sensitive information.
Contract Manager	D&A's contract manager or the Contractor's contract manager specified on the Purchase Order, or such other representatives as nominated by either party (in writing) from time to time.
Data Protection Law	Means: (a) the Data Protection Act 1998; (b) the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; (c) the Privacy and Electronic Communications Directive 2002/58/EC; and (d) all other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; and all references to "personal data", "data processor" and "process" shall be construed accordingly.
Counterfeit Goods	Goods that are or contain items misrepresented as having been designed and/or produced under an approved system or other acceptable method, or that have reached a design life limit or been damaged beyond possible repair but are altered and misrepresented as acceptable.
Default	Any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors (or, in the case of Contractor, any Staff) in connection with or in relation to the subject matter of the Agreement and in respect of which such party is liable to the other.
Environmental Information Regulations	The Environmental Information Regulations 2004 (or current version) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
FOIA	The Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Force Majeure	Means acts, omissions, events, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, sabotage, terrorism or threat thereof; (ii) any act of state or other exercise of sovereign, judicial or executive prerogative by any competent government authority; or (iii) any act of God, earthquake, tempest, cyclone, hurricane, typhoon, tidal wave, whirlwind, storm and other extreme adverse weather conditions; or (iv) a national or international pandemic. Any act, omission, event, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees
Information	has the meaning given under section 84 of the FOIA.
Intellectual Property Rights	means copyrights, patents, utility models, trademarks, service marks, design rights, (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world now or in the future.
Law	means any applicable law, statute, bye-law, regulation, order, regulatory policy, rule of court, delegated or subordinate legislation.
Premises	means the location where the Goods are to be delivered and/or Services are to be performed, as specified in the Purchase Order.
Product Content Regulation or PCR	shall refer to the following laws and/or regulations on content, packaging, labelling, and/or similar issues concerning the Goods or substances: "RoHS" (EU Directive 2011/65/EU on Restriction on the use of certain Hazardous Substances in electrical and electronics equipment "REACH" (EC Regulation No 1907/2006 on Registration, Evaluation and Authorization of Chemicals); EU Member States' implementations of the foregoing; "Conflict

	Minerals” as defined in the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act § 1502, implementing legislation and rules;; and/or any other mutually agreed PCR; together with implementing regulations and/or administrative rules.
Quality Standards	means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or other reputable body that a leading company within the Contractor’s relevant industry or business sector would be expected to comply with.
Service Levels	means the service levels (if any) set out in the Purchase Order.
Staff	means employees, directors, officers, independent contractors and agents of the Contractor or any of its sub-contractors or agents employed or engaged in any way in the performance of the Contractor’s obligations under this Agreement.
WEEE	means waste electrical and electronic equipment as defined in the Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006/3289) (the “WEEE Regulations”) as amended from time to time.
Working Day	means any day other than a Saturday, a Sunday or a day which is a common law or statutory bank holiday in England and Wales.

Recitals

- A. The terms and conditions set out below (including these Recitals) will govern purchases by D&A of Goods and/or Services from the Contractor (“Terms and Conditions”).
- B. Each Purchase Order together with the Terms and Conditions attached constitute one agreement (the “Agreement”) and should be read in conjunction with each other so that the parties understand the terms on which the Goods and/or Services will be provided. Should a conflict or inconsistency arise between the Purchase Order and the Terms and Conditions, the provisions of the Purchase Order shall prevail to the extent of the conflict or inconsistency. Each Purchase Order will be regarded as a separate agreement.
- C. This Agreement will apply to the Contractor's provision of Goods and/or Services to the exclusion of any other terms that the Contractor seeks to impose or incorporate or that are implied by trade, custom, practice or course of dealing. Accordingly, this Agreement shall override any additional, inconsistent or conflicting terms or any purchase order, quotation, confirmation, invoice, acknowledgement, release, or other written correspondence. Any such additional or different terms are hereby deemed material alterations (that have not been agreed pursuant to Clause 14.1) and notice of objection and rejection of them is hereby given.

In consideration of the mutual covenants contained in the Terms and Conditions and intending to be legally bound, the parties agree as follows:

1. Scope

- 1.1. The Contractor acknowledges and agrees that the Goods and/or Services procured under this Agreement are being procured by D&A for and on behalf of itself and/or [its subsidiary] and, unless otherwise stated, all references to “D&A” shall be construed accordingly.
- 1.2. This Agreement shall apply only to the provision of the Goods and/or Services as specified on the Purchase Order. Definitions are set out in Clause 14.20.
- 1.3. This Agreement (together with the documents referred to in it) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters.
- 1.4. Each of the parties acknowledges and agrees that in entering into this Agreement (together with the documents referred to in it) it does not rely on, and shall have no remedy in respect of any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. Nothing in this Agreement shall exclude any liability for fraud or fraudulent misrepresentation.
- 1.5. Where the Contractor is providing only Goods under this Agreement, Clause 3 will not apply to the provision of those Goods. Where the Contractor is providing only Services under this Agreement, Clause 2 will not apply to the provision of those Services. If the Contractor is providing Goods and Services under this Agreement, Clauses 2 and 3 will apply to the provision of those Goods and Services.

2. Provision of Goods

2.1. The Goods

- 2.1.1. The quantity, quality and description of the Goods shall be as specified in the Purchase Order.
- 2.1.2. The Contractor shall ensure that the Goods shall be fully compatible with D&A’s requirements as set out in the Purchase Order. The Contractor represents, warrants, certifies, and covenants that none of the Goods supplied under this Contract contain minerals or chemicals in violation of PCR in any jurisdiction.
- 2.1.3. The Contractor represents and warrants that no Goods delivered to D&A are Counterfeit Goods. For purposes of this clause, “Goods” consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). The Contractor shall only purchase products to be delivered or incorporated as Goods to D&A directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. The Contractor represents and warrants that no Goods shall be acquired from non-franchised distributors or brokers unless approved in advance in writing by D&A. The Contractor shall immediately notify D&A with the pertinent facts if The Contractor becomes aware or suspects that it has furnished Counterfeit Goods. When requested

- by D&A, The Contractor shall provide OCM/OEM documentation that authenticates traceability of the Goods to the applicable OCM/OEM.
- 2.1.4. D&A relies on the skill and judgment of the Contractor in the supply of the Goods and the execution of the Agreement.
- 2.2. Delivery**
- 2.2.1. The Contractor shall deliver the Goods at the times and dates and to the Premises as specified in the Purchase Order.
- 2.2.2. Unless otherwise stated in the Purchase Order, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are delivered to the Premises, accepted and signed for by D&A. Where the Goods are collected by D&A, the point of delivery shall be when the Goods are loaded on D&A's vehicle, accepted and signed for by D&A.
- 2.2.3. Except where otherwise provided in the Agreement, delivery shall include the unloading, stacking and/or installation of the Goods (as appropriate) by the Staff or the Contractor's suppliers or carriers at such place as D&A or duly authorised person shall reasonably direct.
- 2.2.4. D&A shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If D&A elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Contractor to remove them within 7 days of receipt by the Contractor of such notice and to refund to D&A any expenses incurred by D&A as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which D&A shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by D&A, as appropriate.
- 2.2.5. D&A shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated on the Purchase Order.
- 2.2.6. Unless expressly agreed otherwise in the Purchase Order, D&A shall not be obliged to accept delivery by instalments. If, however, D&A does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of D&A, entitle D&A to terminate the whole of any unfulfilled part of the Agreement without further liability to D&A.
- 2.3. Title and Risk**
- 2.3.1. Title and risk in the Goods shall without prejudice to any other rights or remedies of D&A pass to D&A at the time of acknowledgement of delivery.
- 2.4. Damage in Transit**
- 2.4.1. On dispatch of any consignment of the Goods, the Contractor shall send to D&A at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to D&A, D&A shall either elect to reject the consignment; or require the Contractor to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in the Purchase Order provided that D&A has notified the Contractor within 30 days of delivery or the notified date of delivery about such damage or non-delivery.
- 2.5. Inspection, Rejection and Guarantee**
- 2.5.1. The Contractor shall permit D&A or authorised representatives to make any inspections or tests which may reasonably be required and the Contractor shall afford all reasonable facilities and assistance free of charge at the Contractor's premises. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by D&A of any rights or remedies in respect of the Goods and, in particular, D&A retains the right to reject the Goods.
- 2.5.2. D&A may by written notice to the Contractor reject any of the Goods which fail to meet the requirements set out in the Purchase Order. Such notice shall be given within a reasonable time after delivery to D&A of the Goods concerned. If D&A rejects any of the Goods pursuant to this Clause D&A shall be entitled (without prejudice to other rights and remedies) either:
- (a) to have the Goods repaired or replaced by the Contractor (at D&A's option) within 7 days with Goods which conform in all respects with the requirements set out in the Purchase Order and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) to treat the Agreement as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by D&A in obtaining other goods in replacement.
- 2.5.3. The issue by D&A of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.
- 2.5.4. Unless agreed otherwise, the Contractor shall guarantee the Goods for the shorter of 12 months from putting into service or 18 months from delivery. If D&A, within such guarantee period or within 30 days thereafter, gives notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which D&A may have) as quickly as possible remedy such defects (whether by repair or replacement as D&A shall elect) without cost to D&A.
- 2.5.5. Any Goods rejected or returned by D&A as described in Clause 2.5.2 shall be returned to the Contractor at the Contractor's risk and expense.
- 2.6. Labelling and Packaging**

- 2.6.1. The Goods shall be packed and marked in a proper manner and in accordance with D&A's instructions and any statutory requirements and any requirements of the carriers. In particular all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 3. Provision of Services**
- 3.1. The Services**
- 3.1.1. The Services shall be as specified in the Purchase Order. The Contractor shall provide the Services in accordance with the Service Levels and any other D&A requirements set out in the Purchase Order.
- 3.2. Review of Services**
- 3.2.1. D&A shall be entitled to inspect and examine the performance of the Services at D&A's Premises at any reasonable time provided that D&A gives reasonable notice to the Contractor of its intention to do so.
- 3.3. Standard of Services**
- 3.3.1. The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of work has not been specified in the Agreement the Contractor shall use the best applicable techniques and standards and execute the Agreement in accordance with good industry practice.
- 3.3.2. The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.
- 3.3.3. The signing by D&A's Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Agreement.
- 3.3.4. In its provision of the Services, the Contractor shall and shall procure that all Staff shall comply with all D&A policies and procedures as in force from time to time. The preceding shall include but not be limited to D&A's security, IT, HR, diversity, publicity, environmental and health and safety policies and procedures.
- 3.4. Remedies for Non-Conforming Services**
- 3.4.1. In the event that the Contractor and/or the Staff fail to perform the Services, or any of them, in accordance with this Agreement, and such failure is not caused by D&A, then D&A may either:
- (a) require the Contractor, at the Contractor's own expense, promptly to remedy or re-perform any non-conforming Services; or
- (b) withhold payment to the Contractor or recover as a sum of money due from the Contractor the Charges or any portion thereof that are allocable to the non-conforming Services.
- 3.4.2. If the Contractor fails to remedy or re-perform any non-conforming Services pursuant to Clause 3.4.1(a) within 7 days after notice is given to the Contractor, D&A may either remedy or re-perform the non-conforming Services itself or have them remedied or re-performed by a third party on its behalf, and in either case the Contractor shall pay the reasonable costs so incurred by D&A.
- 3.4.3. In the event that the Contractor materially and repeatedly fails to perform the Services or any of them in accordance with this Agreement, and such failure is not remediable or, if remediable, is not remedied within [10] days after notice is given to the Contractor, then D&A may terminate this Agreement in accordance with Clause 12.3.
- 4. Time of the Essence**
- 4.1. Unless otherwise agreed in writing by D&A, time of delivery shall be of the essence and failure to deliver the Goods and/or Services within the time promised or specified shall enable D&A (at D&A's option) to (i) release itself from any obligation to accept and pay for the Goods and/or Services; and/or (ii) cancel all or part of the Agreement.
- 5. Contractor Equipment**
- 5.1. The Contractor shall provide all the equipment necessary for the provision of the Goods and/or Services.
- 5.2. The Contractor shall make no delivery of equipment, materials nor commence any work on D&A's Premises without obtaining D&A's prior Approval.
- 5.3. All equipment brought onto D&A's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of equipment when no longer required at its sole cost. The Contractor shall ensure that D&A's Premises are appropriate to contain and operate the equipment.
- 5.4. The Contractor shall maintain all items of its equipment within D&A's Premises in a safe, serviceable and clean condition.
- 5.5. All equipment provided by the Contractor shall be at the risk of the Contractor and D&A shall have no liability for any loss of or damage to such equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of D&A.
- 5.6. D&A shall have the power at any time during the provision of the Goods and/or Services to order in writing that the Contractor:
- (a) remove from D&A's Premises any equipment which in the opinion of D&A is either hazardous, noxious or not in accordance with the Agreement; and/or
- (b) substitute proper and suitable materials, plant and equipment.
- 5.7. On completion of the delivery of the Goods and/or Services, the Contractor shall remove any equipment, materials and/or rubbish arising out of the provision of the Goods and/or Services and shall leave D&A's Premises in a neat and tidy condition.
- 6. Mistakes in Information**
- 6.1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to D&A by the Contractor in connection with the provision of Goods and/or Services and shall pay D&A any extra costs occasioned by any discrepancies, errors or omissions therein.

7. Work Permits

- 7.1. The Contractor shall be responsible for checking that its Staff are legally entitled to work in the United Kingdom and where appropriate have the required visa, work permit or permission issued by the appropriate UK authority to undertake work of the nature for which the Contractor is supplying them to D&A. The Contractor further agrees to indemnify D&A against all claims, costs and damages howsoever arising from any breach of this Clause. This Clause will not be subject to the liability limit expressed in Clause 11.

8. Warranties and Representations

- 8.1. The Contractor warrants and represents that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
 - (b) it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
 - (c) all its obligations pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
 - (d) the Goods and/or Services comply with all Laws;
 - (e) the Goods and/or Services shall be to the reasonable satisfaction of D&A;
 - (f) the Goods shall be fit for purpose and shall be in all respects within the normal limits of industrial quality;
 - (g) the Goods and/or Services shall comply with any particulars specified in the Purchase Order;
 - (h) the Goods shall be free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by D&A;
 - (i) any software forming part of the Goods or Services (including any media on which it may be delivered) shall be free from viruses or other malicious code; and
 - (j) it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

9. Payment

9.1. Charges

- 9.1.1. In consideration of the performance by the Contractor of its obligations under the Agreement, D&A shall pay the Charges in accordance with the payment terms specified in this Clause 9 and the Purchase Order.
- 9.1.2. The Charges are exclusive of Value Added Tax. D&A shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by Law, from time to time.

9.2. Payment and Tax

- 9.2.1. D&A shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of D&A.
- 9.2.2. D&A may reduce payment in respect of any Goods and/or Services which the Contractor has either failed to provide or has provided inadequately.
- 9.2.3. The Contractor shall not suspend the supply of the Goods and/or Services unless the Contractor is entitled to terminate the Agreement under Clause 12.3.2 for failure to pay undisputed charges.
- 9.2.4. D&A may set off and retain any amount owed to it by the Contractor against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and D&A.

10. Intellectual Property Rights

- 10.1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Contractor by D&A shall remain the property of D&A or its licensors.
- 10.2. The Contractor confirms to D&A that it has the power, authority and right (i) to provide the Goods and/or Services to D&A without infringing or violating the rights (including Intellectual Property Rights) of any third party and (ii) for D&A to fully enjoy the Goods and/or Services provided by the Contractor as anticipated by this Agreement without infringing or violating the rights (including Intellectual Property Rights) of any third party. The Contractor warrants that it will not knowingly, wilfully or negligently cause D&A to be in breach of such third party intellectual property or other rights through D&A's enjoyment of the Goods and/or Services as anticipated by this Agreement.
- 10.3. If any new Intellectual Property Rights are created by the Contractor in the provision of the Services or as an output of the Services, then all such Intellectual Property Rights shall vest in D&A. The Contractor hereby assigns (or shall procure the assignment) to D&A, with full title guarantee, title to and all rights and interest in such Intellectual Property Rights. The Contractor shall at the request of D&A execute all such documents and do all such further acts as D&A may require to perfect this assignment. D&A shall grant the Contractor a non-exclusive, non transferable licence during the term of the Agreement, to use such Intellectual Property Rights to the extent necessary to enable the Contractor to provide the Services.

11. Liabilities and Indemnities

11.1. Limitation of Liability

- 11.1.1. Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 and/or Section 2 of the Supply of Goods and Services Act 1982.
- 11.1.2. Subject always to Clauses 11.1.1 and 11.1.4, the aggregate liability of either party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Agreement shall in no event exceed one million pounds (£1,000,000).
- 11.1.3. Subject always to Clauses 11.1.1 and 11.1.4, the annual aggregate liability under the Agreement of either party for all Defaults (other than a Default governed by Clause 7, Clause 11.2.1, Clause 11.2.2, Clause 13 and Clause 14.7, which shall be unlimited) shall in no event exceed the greater of one million pounds (£1,000,000) or two hundred per cent (200%) of the amount paid and payable by D&A for the Goods and/or Services (as determined at the date on which the liability arises).
- 11.1.4. Subject always to Clause 11.1.1, in no event shall either party be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings and indirect or consequential loss or damage.

11.2. Indemnities

- 11.2.1. The Contractor shall indemnify and keep D&A indemnified fully against all claims, actions, losses, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs) whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by a Contractor Default.
- 11.2.2. The Contractor shall indemnify and shall keep D&A indemnified against all claims, actions, losses, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs) which D&A may suffer or incur as a result of or in connection with any breach of Clause 10.2, except to the extent that such claim relates to designs furnished by D&A or the use of data supplied by D&A which is not required to be verified by the Contractor under any provision of the Agreement.

12. Term and Termination

12.1. Term

- 12.1.1. This Agreement shall come into force on the date set out in the Purchase Order and shall remain in full force and effect for the period set out in the Purchase Order unless and until either party exercises its right to terminate in accordance with this Clause.
- 12.1.2. At the end of the term referred to in Clause 12.1.1, D&A may extend the term of this Agreement for the period set out in the Purchase Order by giving not less than 3 months' prior written notice to the Contractor.

12.2. Termination on Change of Control and Insolvency

- 12.2.1. D&A may terminate the Agreement by notice in writing with immediate effect where:
- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
 - (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
 - (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
 - (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (e) any similar event occurs under the law of any other jurisdiction.
- 12.2.2. D&A may only exercise its right under Clause 12.2.1.1 within six months of it becoming aware of such a change of control occurring and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify D&A's Contract Manager immediately when any change of control occurs.

12.3. Termination on Default

- 12.3.1. D&A may terminate this Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:
- (a) the Contractor has not remedied the Default to the satisfaction of D&A within 30 days, or such other period as may be specified by D&A, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - (b) the Default is not capable of remedy; or
 - (c) the Default is a fundamental breach of the Agreement.
- 12.3.2. The Contractor may terminate this Agreement if D&A is in material breach of its obligations to pay undisputed charges by giving D&A 90 days' notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Clause 12.3.2 shall not apply to non-payment of the charges where such non-payment is due to D&A exercising its rights under Clause 9.2.2.

12.4. Consequences of Termination

- 12.4.1. The provisions of Clauses 8, 10, 11, 12.4.1, 13.1, 13.3, 13.4, 14.15, 14.16, 14.17, 14.18 and 14.19 and any other provision that by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 12.4.2. Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Contractor and D&A accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.
- 12.4.3. In the event that this Agreement is terminated or expires, each party shall return to the other party all property and information (including all Confidential Information) belonging to the other party then in its possession or control or (at the other party's election) certify destruction of the same.

13. Protection of Information

13.1. Confidentiality

- 13.1.1. Except to the extent set out in this Agreement, each party shall treat the other party's Confidential Information as confidential and safeguard it accordingly and not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 13.1.2. Clause 13.1.1 shall not apply to the extent that:
 - (a) such disclosure is a requirement of Law placed upon the Disclosing Party, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations;
 - (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without the obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - (e) such information is independently developed without access to the other party's Confidential Information.
- 13.1.3. The Contractor may only disclose D&A's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 13.1.4. The Contractor shall not, and shall procure that the Staff do not, use any of D&A's Confidential Information received other than for the purposes of this Agreement.
- 13.1.5. Where it is considered necessary in the opinion of D&A, the Contractor shall and shall ensure that the Staff or such professional advisors or consultants as may be provided with or have access to D&A's Confidential Information sign a confidentiality undertaking to D&A's satisfaction before commencing work in connection with the Agreement.
- 13.1.6. The Contractor shall immediately inform D&A if it becomes aware of the possession, use or knowledge of any of D&A's Confidential Information by any unauthorised person and shall provide such reasonable assistance as is required by D&A to deal with such event.
- 13.1.7. Nothing in this Clause shall prevent D&A disclosing any Confidential Information for the purpose of:
 - (a) the examination and certification of D&A's accounts;
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which D&A has used its resources; or
 - (c) the FOIA and/or the Environmental Information Regulations; or
- 13.1.8. Nothing in this Clause shall prevent D&A disclosing any Confidential Information obtained from the Contractor:
 - (a) to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or
 - (b) to any person engaged in providing any services to D&A for any purpose relating to, or ancillary to, the Agreement provided that they are made aware of these obligations of confidentiality.
- 13.1.9. The Contractor shall take all precautions necessary to preserve the integrity of any D&A Confidential Information and to prevent any corruption, loss or unauthorised disclosure of D&A Confidential Information.
- 13.1.10. Nothing in this Clause 13.1 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

13.2. Data Protection

- 13.2.1. Each party undertakes that it shall duly observe all its obligations under Data Protection Law which arise in connection with this Agreement to the extent applicable to the activities undertaken by each party. To the extent the nature of the Services requires the Contractor to process D&A personal data as a data processor, the Contractor shall:
 - (a) only carry out such processing in accordance with D&A's instructions;
 - (b) implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful disclosure or accidental destruction, damage or loss;
 - (c) ensure the reliability of all Staff who have or will have access to the personal data and not subcontract any data processing obligations without D&A's prior written consent;

- (d) not (by any knowing, wilful or negligent act or omission) place D&A in breach of Data Protection Law; and
- (e) not process or cause to be processed that personal data outside the European Economic Area except with D&A's prior written consent (with the Contractor having fulfilled all D&A requirements to enable such processing).

13.3. Publicity and Branding

- 13.3.1. The Contractor shall not, without the prior written consent of D&A make any press announcements or publicise this Agreement or its contents in any way, or use D&A's name or brand in any promotion or marketing or announcement of orders without the prior written consent of D&A.
- 13.3.2. The Contractor shall take all reasonable steps to ensure the observance of the provisions of this Clause 13.4 by all its Staff and professional advisors.
- 13.3.3. Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Goods or Services as applicable) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

13.4. Security

- 13.4.1. Access to D&A's Premises shall not be exclusive to the Contractor but shall be limited to such Staff as are necessary in the provision of the Goods and/or Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others as D&A may reasonably require.
- 13.4.2. The Contractor shall comply with all of D&A's reasonable security requirements (including those set out in D&A's security policies as amended or updated by D&A from time to time) while on the Premises and/or at all times during its performance of its obligations under this Agreement, and shall procure that all of its Staff shall likewise comply with such requirements. The Contractor shall if requested sign and abide by D&A's Declaration of Secrecy.
- 13.4.3. D&A reserves the right to refuse admission to any premises over which D&A has control, to remove Staff from any premises over which D&A has control and/or direct the Contractor to end the involvement in the provision of the Goods or Services by any of the Staff whom D&A believes represents a security risk or does not have the required levels of training and expertise or where D&A has other grounds for doing so. The decision of D&A shall be final and it shall not be obliged to provide any reasons.
- 13.4.4. If and when directed by D&A, the Contractor shall provide a list of the names and business addresses of all persons who it is expected may require admission to D&A's premises in connection with the performance of this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as D&A may reasonably require.
- 13.4.5. Failure by the Contractor to comply with the provisions of Clause 13.5.4 within a reasonable time of written notice to do so will entitle D&A to refuse admission to its premises to any person who has not been notified to D&A in accordance therewith and will allow D&A to terminate the Agreement.

14. General

14.1. Amendments

- 14.1.1. Except as otherwise explicitly provided in this Agreement, the Agreement shall not be amended except with the prior written approval of an authorised signatory of each party.

14.2. Notices and Communications

- 14.2.1. Any notice or request required or permitted to be given or made under this Agreement shall be in writing and to the address notified by each party. Such notice or request shall be deemed to have been served and received: if delivered by hand, at the time and date of delivery; or if sent by fax, at the time and date of the successful fax transmission report; if sent by recorded delivery or registered post, 48 hours from the date of posting (such date as evidenced by postal receipt etc); and if sent by registered airmail, 5 days from the date of posting.

14.3. Insurance

- 14.3.1. The Contractor undertakes that for the duration of this Agreement, it has and shall maintain adequate insurance (including professional indemnity insurance where applicable) to cover its contractual liabilities under this Agreement. The Contractor shall produce copies of its insurance policies to D&A upon request.

14.4. Relationship of the Parties

- 14.4.1. Nothing in this Agreement is intended to create a partnership, agency, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.
- 14.4.2. The Contractor's status shall be that of an independent contractor and it is expressly understood that the Contractor is not an employee or servant of D&A.

14.5. Health and Safety

- 14.5.1. The Contractor agrees to comply with D&A's rules and procedures regarding health and safety when on D&A's Premises, and any additional rules made known to the Contractor from time to time by D&A together with all applicable statutory rules and regulations regarding these matters. The Contractor will be responsible for procuring that Staff also comply with these rules and regulations.
- 14.5.2. Either party shall notify the other as soon as practicable of any health and safety hazards at D&A's Premises of which it becomes aware. The Contractor will draw these hazards to the attention of the Staff and will instruct those persons in connection with any necessary associated safety measures.

- 14.5.3. The Contractor shall report immediately to D&A any accident or injury and any damage to the property of D&A or to the property of any third parties occurring in or arising out of the performance of its obligations under this Agreement and any act, matter or thing which within its knowledge may have caused such accident or injury.
- 14.6. Environmental Considerations and Compliance with Laws**
- 14.6.1. The Contractor shall, when working on D&A's Premises, perform the Agreement in accordance with D&A's environmental policy and all applicable environmental laws and regulations in force from time to time in relation to the Goods and/or Services under this Agreement. The Contractor shall be responsible for collection, treatment, recovery and environmentally sound disposal of all WEEE arising or deriving from the Goods and shall comply at all times with the WEEE Regulations if applicable.
- 14.6.2. The Contractor and all persons controlled by the Contractor shall at all times comply at their own expense with all applicable Laws. Upon request, The Contractor shall provide D&A with reasonable documentation demonstrating such compliance, and The Contractor further agrees to indemnify, defend and hold D&A harmless from and against any loss or expense arising from The Contractor's noncompliance with any applicable Law.
- 14.7. Prevention of Bribery and Corruption**
- 14.7.1. The Contractor warrants and covenants that it and its Staff shall comply with any applicable Law in force from time to time regarding bribery, fraudulent acts and/or any other corrupt practice including (a) the Bribery Act 2010, (b) the Anti-Terrorism, Crime and Security Act 2001, (c) the US Foreign Corrupt Practices Act of 1977, and (d) any equivalent Laws in the territory in which the contractor or its Associates perform services for D&A ("Anti-Bribery Law").
- 14.7.2. Without limiting Clause 14.7.1 the Contractor represents, warrants and undertakes that it shall procure that its Staff and any other third party that perform the Services on its behalf will comply with the Anti-Bribery Law.
- 14.7.3. Without limiting Clauses 14.7.1 and 14.7.2, the Contractor represents, warrants and undertakes that it and its Staff will:
- (a) adhere to and comply with any policies or protocols notified to it by D&A from time to time regarding bribery, fraudulent acts and/or any other corrupt practices, and
 - (b) provide any information reasonably requested by D&A from time to time in relation to ensuring compliance by D&A with any law or Anti-Bribery Law; and
- 14.7.4. Without limiting Clause 14.7.1, the Contractor represents, warrants and undertakes that it and its Staff will not offer promise or agree to give any financial or other advantage (including, but not limited to, any money or gift of any value), to:
- (a) any official or employee of any government, governmental or regulatory agency or other public body (or any person acting in an official capacity for or on behalf of any government, governmental or regulatory agency or other public body) in return for such person assisting (by acting or refraining from acting in their official capacity), either directly or indirectly, in obtaining or retaining business for D&A; or
 - (b) any other person as an inducement or reward for the improper performance of any function or activity in relation to obtaining or retaining business for D&A. In this context "improper performance" means performance which does not comply with any reasonable expectations of impartiality or good faith or otherwise, that are expected of the Contractor or its Staff.
- 14.7.5. The Contractor specifically shall indemnify D&A against all costs, losses, damages or expenses (including, but not limited to third party claims, fines and penalties) incurred by or imposed upon D&A due to any failure by the Contractor or its Staff to comply with any of its obligations under this Clause 14.7. The limitation of liability set out in Clause 11 shall not apply in respect of any liability which may arise under this Clause 14.7.
- 14.8. D&A Property**
- 14.8.1. Where D&A for the purpose of the Agreement issues D&A Property free of charge to the Contractor such D&A Property shall be and remain the property of D&A. The Contractor shall not in any circumstances have a lien on D&A Property and the Contractor shall take all reasonable steps to ensure that the title of D&A to such D&A Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.
- 14.8.2. The Contractor shall ensure the security of all D&A Property whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with D&A's reasonable security requirements as required from time to time.
- 14.8.3. The Contractor shall be liable for any and all loss of or damage to any D&A Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of D&A. The Contractor's liability set out in this Clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of D&A. The Contractor shall inform D&A's Contract Manager within 5 Working Days of becoming aware of any defects appearing in or losses or damage occurring to D&A Property made available for the purposes of the Agreement.
- 14.9. Assignment and Sub-contracting**
- 14.9.1. The Contractor may not sub-license, assign, novate, or transfer this Agreement or any of its rights or obligations (including by way of sub-contracting) without the prior written consent of D&A. Any attempt to assign, transfer or declare a trust without consent shall be null and void and shall be a breach of this Agreement by the Contractor.
- 14.9.2. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 14.10. Disruption and Force Majeure**

- 14.10.1. The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of D&A, its employees or any other contractor employed by D&A.
- 14.10.2. Neither party shall be liable to the other for loss or damage arising from a failure or delay on its part to perform any obligation under this Agreement where such failure or delay arises solely due to a Force Majeure Event.
- 14.10.3. If either of the parties shall become aware of circumstances of a Force Majeure Event which give rise to or which are likely to give rise to any such failure or delay on its part shall notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 14.10.4. Should a Force Majeure Event persist for a period of [60] days or more then either party shall be entitled to terminate this Agreement with immediate effect and the Clauses of this Agreement relating the consequences of termination shall take effect.
- 14.10.5. The party affected by the Force Majeure Event shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 14.11. Conflicts of Interest**
- 14.11.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to D&A under the provisions of this Agreement. The Contractor will immediately disclose to D&A full particulars of any such conflict of interest which may arise.
- 14.12. Waiver**
- 14.12.1. The rights and remedies provided by this Agreement may be waived only in writing and signed by or on behalf of an authorised signatory of each party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 14.12.2. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 14.12.3. A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.
- 14.13. Cumulative Remedies**
- 14.13.1. The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any rights or remedies provided at law or in equity or otherwise under this Agreement.
- 14.14. Severability**
- 14.14.1. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, D&A and the Contractor shall immediately commence good faith negotiations to remedy such invalidity so that, as amended, it is legal and enforceable and, to the greatest extent possible, achieves the intended purpose of the original Agreement.
- 14.15. Audit Rights**
- 14.15.1. The Contractor shall keep and maintain until 10 years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Goods or Services (as applicable) provided under it, the Charges due to the Contractor and all payments made by D&A under this Agreement.
- 14.15.2. The Contractor shall allow D&A by its own employees or duly authorised agents at all reasonable times and upon reasonable notice to inspect and take copies of or extracts from such records to the extent reasonably necessary for the purpose of verifying the proper performance by the Contractor of its obligations pursuant to this Agreement and the amounts due to the Contractor hereunder.
- 14.16. Third Party Rights**
- 14.16.1. Except where expressly provided to the contrary, this Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person who is not named at the date of this Agreement as a party to it or any person who claims rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of the rights under it for the benefit of any third party. The parties to this Agreement reserve the right to rescind or vary this Agreement without the consent of any third party who is expressly entitled to enforce this Agreement.
- 14.17. Dispute Resolution Procedure**
- 14.17.1. The parties shall attempt to resolve any dispute (other than a dispute relating to the termination of this Agreement in whole or in part) arising under or in relation to this Agreement by internal escalation procedures.
- 14.17.2. If the parties fail to resolve the dispute internally within 20 Working Days, then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.
- 14.17.3. In the event that the parties fail to agree the resolution of the dispute at the end of the mediation, either party may then invoke legal proceedings to seek determination of the dispute.
- 14.17.4. The Contractor shall continue to provide the Goods and/or Services in accordance with the terms of this Agreement until a dispute has been resolved.

14.17.5. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

14.18. Governing Law and Jurisdiction

14.18.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law and, subject to the terms of this Agreement, the parties submit to the exclusive jurisdiction of the English courts to settle all such disputes or claims.