

## ARCA TERMS AND CONDITIONS – SUPPLY OF SERVICES

# The Box

These terms and conditions govern the Supplier's provision of Services to Arca (Plymouth Limited) trading as “The Box” and are incorporated into the Contract.

### I Interpretation

I.1 In these Conditions, the following definitions apply:

**Acceptance Criteria:** any criteria with which any Deliverables must comply as set out in the Purchase Order or the Specification or evidenced by written agreement between the parties.

**Annex:** any of the following annexes (if used): Annex 1- Special Conditions of Contract; Annex 2 - Specification.

**Applicable Law:** the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services from time to time.

**Business Continuity Plan:** a plan prepared and maintained by the Supplier which is required to be robust, with a clearly defined risk assessment, strategy for resilience and strategy for recovery of usual service provision.

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

**Charges:** the charges for the Services referred to in Condition 13 and set out in the Purchase Order.

**Codes of Practice:** the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to Arca's FOIA obligations, as amended, updated and replaced from time to time.

**Conditions:** these terms and conditions, including any Annexes.

**Confidential Information:** all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by Arca or its Representatives to the Supplier or its Representatives, including any information which is marked OFFICIAL: SENSITIVE or private and any information relating to Arca's members, customers, clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property.

**Contract:** the contract between Arca and the Supplier for the provision of the Services comprising the Purchase Order and these Conditions.

**Arca:** Arca (Plymouth Limited) company registration number 12187662 whose registered office is at Ballard House, West Hoe Road, Plymouth, PL1 3BJ.

**Arca Materials:** shall have the meaning given in Condition 4.1.4.

**Arca Representative:** any individual named as such in the Purchase Order or such person or persons as notified to the Supplier by Arca in writing from time to time.

**Data Protection Law:** the Data Protection Act 2018, all related and subordinate legislation including GDPR and any guidance or codes of practice issued by the Information Commissioner.

**Deliverables:** all products of the Services (whether tangible or not), including Documents and data (and drafts of either) and the media on which they are recorded.

**Delivery Location:** the address specified by Arca in the Purchase Order where the Services are to be performed. Where no address is specified, the Services shall be performed at Arca, Ballard House, Plymouth, PL1 3BJ.

**Document:** includes any document in hard or electronic copy.

**EIR:** the Environmental Information Regulations 2004 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 the 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.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property Rights:** all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets).

**Public Body:** any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

**Purchase Order:** the written order from Arca for Services incorporating or attached to these Conditions.

**Premises:** any premises owned, leased to, controlled or occupied by Arca or its Representatives which are made available for use by the Supplier or its Representatives for the delivery or performance of the Services.

**Representatives:** employees, officers, agents, advisors, sub-contractors, suppliers or other representatives.

**Request for Information:** a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.

**Services:** the services provided or to be provided by the Supplier under the Contract as set out in the Purchase Order and/or Specification including the Deliverables.

**Specification:** any description of the Services (including any Deliverables to be produced) set out in Annex 2.

**Supplier:** the person, firm or company to whom the Purchase Order is addressed.

**Transfer Regulations:** Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and any successor legislation.

**Variation:** shall have the meaning given in Condition 5.1.

1.2 In these Conditions, the following rules of interpretation apply:

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

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

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

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

1.3 In the event of any inconsistency or conflict between any Purchase Order and these Conditions, these Conditions shall prevail.

- 1.4 In the event of any inconsistency or conflict between any Annex and these Conditions, the Annex shall prevail.

## **2 Formation of Contract**

- 2.1 The Contract shall come into existence and take effect on Arca's issue of a Purchase Order for the Services and shall remain in full force and effect until either:
- 2.1.1 the parties have discharged all their obligations under it (at which point it shall expire); or
  - 2.1.2 it is terminated in accordance with these Conditions.
- 2.2 These Conditions apply to the supply of the Services to the exclusion of any other terms that the Supplier may seek to impose or incorporate (including any standard trading terms of the Supplier), or which are implied by trade, custom, practice or course of dealing.

## **3 Supplier's warranties**

- 3.1 The Supplier shall provide the Services specified in the Purchaser Order and/or the Specification in accordance with these Conditions.
- 3.2 The Supplier warrants that:
- 3.2.1 it will meet any dates set out in the Purchase Order or Specification for the delivery of the Deliverables or the performance of the Services or (where no dates are so specified) then the Supplier perform the Services (any delivery any Deliverables) within a reasonable time;
  - 3.2.2 the design, construction and quality of Deliverables and the method and quality of performance of the Services will comply in all respects with all relevant requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided;
  - 3.2.3 it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
  - 3.2.4 it will not do or omit to do anything which may cause Arca to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs;
  - 3.2.5 its Representatives will behave in a polite and courteous manner at all times when on the Premises;
  - 3.2.6 the Services will conform as to their quantity, quality and description set out in the Purchase Order or Specification, including with all Acceptance Criteria but for the avoidance of doubt the obligations under this clause 3.2.6 shall not impose a "fitness for purpose" obligation;
  - 3.2.7 the Services will meet any standard or performance levels set out in the Purchase Order or Specification or which can reasonably be expected for Services of the type in question, but for the avoidance of doubt the obligations under this clause 3.2.7 shall not impose a "fitness for purpose" obligation;
  - 3.2.8 the Services will conform to any literature or description supplied by the Supplier to Arca prior to the issue of the Purchase Order;
  - 3.2.9 it will perform the Services with all reasonable care, skill and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
  - 3.2.10 it will use personnel to provide the Services who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all of its obligations in accordance with the Contract;

- 3.2.11 it will use the best quality goods, tools, materials, standards and techniques in performing the Services;
- 3.2.12 its Representatives will comply with all of Arca's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Supplier (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises; and
- 3.2.13 its Representatives will comply with all of Arca's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Supplier (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises.

#### **4 Supplier's general undertakings**

4.1 The Supplier undertakes to:

- 4.1.1 provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Services;
- 4.1.2 co-operate with Arca and any third party nominated by Arca in all matters relating to the Contract;
- 4.1.3 comply with all reasonable instructions of Arca;
- 4.1.4 hold all materials, equipment and tools, drawings, specifications and data supplied by Arca to the Supplier (Arca Materials) in safe custody at its own risk, maintain the Arca Materials in good condition until returned to Arca, and not dispose of or use Arca Materials other than in accordance with Arca's written instructions or authorisation;
- 4.1.5 promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the performance of the Services and leave the Premises in a clean and tidy condition, failing which Arca may dispose of them and make good the Premises at the expense of the Supplier;
- 4.1.6 use all reasonable endeavours to transfer to Arca the benefit of any warranty or guarantee given by the manufacturer of any goods contained in the Deliverables of which the Supplier is not the manufacturer;
- 4.1.7 notify Arca as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware; and
- 4.1.8 it will comply with the International Financial Reporting Standard [for Small and Medium- sized Entities (SMEs)] and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

## **5 Variation of the Services**

- 5.1 Arca reserves the right on giving written notice to the Supplier from time to time to require changes to the Services (including by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reason whatsoever. Such a change is hereinafter called "a Variation".
- 5.2 In the event of a Variation the Charges may also be varied. Such variation in the Charges shall be calculated by Arca and agreed in writing with the Supplier and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- 5.3 The Supplier shall provide such information as may be reasonably required to enable such varied price to be calculated.

## **6 Supplier's personnel**

- 6.1 Arca reserves the right:
  - 6.1.1 to refuse to admit to the Premises and to require the Supplier to replace with another suitably qualified person any Representative of the Supplier whose admission would in the reasonable opinion of Arca be undesirable; and
  - 6.1.2 to request the replacement of any Representative of the Supplier who in Arca's reasonable opinion is not suitably qualified or experienced to perform the Services.
- 6.2 Where any Representative of the Supplier is named on the Purchase Order or in the Specification as fulfilling a specific role in connection with the performance of the Services, the Supplier will use all reasonable endeavours to ensure that the named Representative continues to fulfil the specified role and will not replace him or her without Arca's written consent, such consent not to be unreasonably withheld.
- 6.3 If reasonably so requested by Arca and subject to compliance by both parties with Data Protection Law, the Supplier shall promptly provide a list of the names and addresses of all persons who may at any time require admission to the Premises in connection with the performance of the Services, specifying the role in which each such person is concerned with the Supplier and giving such other particulars as Arca may require.

## **7 Testing and acceptance of Deliverables**

- 7.1 All Deliverables must meet any relevant Acceptance Criteria.
- 7.2 Arca may test Deliverables at any time during the period of 15 Business Days following notification by the Supplier of completion of the Services (or relevant part of the Services) and production at the Premises of the Deliverables.
- 7.3 If any Deliverables fail to meet their Acceptance Criteria Arca will notify the Supplier accordingly specifying the non-conformity.
- 7.4 Where Deliverables fail to meet the Acceptance Criteria Arca will request the Supplier to remedy the non-compliance at its own expense within 15 Business Days of Arca's notification under Condition 7.3, following which Arca shall have a further 15 Business Days in which to re-test the Deliverables for conformity with the Acceptance Criteria.
- 7.5 If any Deliverables fail to meet the Acceptance Criteria on re-testing under Condition 7.4, Arca may reject them and exercise its rights under Condition 9.

## **8 Risk and title**

- 8.1 Risk in Deliverables shall pass to Arca on acceptance under Condition 7.
- 8.2 Title to Deliverables shall pass to Arca on acceptance under Condition 7.

## **9 Arca's remedies**

- 9.1 If:
    - 9.1.1 the Supplier fails to perform the Services by the date required under these Conditions; or
    - 9.1.2 the Supplier fails to comply with its warranties set out in Condition 3; or
    - 9.1.3 Condition 7.5 applies
- Arca may exercise any of the rights set out in Condition 9.2
- 9.2 The rights referred to in Condition 9.1 are:
    - 9.2.1 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
    - 9.2.2 to refuse to accept any delivery of Deliverables which the Supplier attempts to make;
    - 9.2.3 to reject any Deliverables (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
    - 9.2.4 to recover from the Supplier any costs incurred by Arca in having a third party provide substitute Services or in performing the Services itself;
    - 9.2.5 where Arca has paid in advance for Services that have not been performed by the Supplier, to have such sums refunded by the Supplier immediately;
    - 9.2.6 to claim damages for any additional costs, loss or expenses incurred by Arca which are attributable to the Supplier's failures set out in Condition 9.1;
    - 9.2.7 to terminate the Contract with immediate effect by giving written notice to the Supplier.
  - 9.3 The rights set out in Condition 9.2 are cumulative and the exercise by Arca of any one of them shall not preclude it from exercising any other.
  - 9.4 Arca's rights under this Condition 9 are in addition to its rights and remedies implied by statute and at common law.

## **10 Arca's obligations**

Arca will:

- 10.1.1 provide the Supplier with reasonable access to the Premises at reasonable times during Business Days for the purpose of providing the Services or delivering the Deliverables;
- 10.1.2 where appropriate, provide reasonable access to facilities on the Premises; and
- 10.1.3 provide such information as the Supplier may reasonably request in connection with the provision of the Services provided that Arca (acting reasonably) considers such information necessary for the purpose of providing the Services.

## **11 Transfer Regulations**

- 11.1 To the extent that the Transfer Regulations apply, the parties will comply with their respective obligations imposed by the Transfer Regulations and each shall indemnify the other from and against all losses, costs, claims, demands, actions, fines, penalties awards, liabilities and expenses (including legal expenses on an indemnity basis) the it may suffer in connection with or as a result of any claim, action or demand by any person or their representative arising out of any breach of its obligations under the Transfer Regulations.

## **12 Liability**

- 12.1 In this Condition 12, a reference to Arca's liability for something is a reference to any liability whatsoever which Arca might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from Arca's negligence or from negligence for which Arca would otherwise be liable.
- 12.2 Arca is not in breach of the Contract, and does not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Supplier's breach of the Contract.
- 12.3 Subject to Condition 12.5 Arca shall not have any liability for:
- 12.3.1 any indirect or consequential loss or damage;
  - 12.3.2 any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
  - 12.3.3 any damage to goodwill or reputation;
  - 12.3.4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Supplier or its Representatives;  
or
  - 12.3.5 any loss, damage, costs or expenses suffered or incurred by any third party.
- 12.4 Subject to Condition 12.5, Arca's total liability shall be limited to the Charges it has paid or is due to pay to the Supplier under the Contract.
- 12.5 Nothing in these Conditions restricts Arca's liability for:
- 12.5.1 death or personal injury resulting from negligence for which it is responsible; or
  - 12.5.2 its fraud (including fraudulent misrepresentation).

## **13 Charges and payment**

- 13.1 The Charges for the Services and the date or dates on which they are payable are set out in the Purchase Order or any Annex; and
- 13.1.1 (in the case of Deliverables) shall be inclusive of any costs of packaging, insurance and carriage;
  - 13.1.2 (in the case of Services) shall include all costs and expenses of the Supplier and its Representatives directly or indirectly incurred in connection with their performance; and
  - 13.1.3 unless otherwise specified shall be inclusive of any amounts in respect of valued added tax chargeable from time to time (VAT).

- 13.2 Unless otherwise provided in the Purchase Order, the Supplier may invoice the Charges at any time on or after whichever is the later of acceptance of the Deliverables or completion of the Services.
- 13.3 Invoices must include the Purchase Order number and sufficient supporting information to enable Arca to identify the Deliverables and Services for which payment is claimed.
- 13.4 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Arca, the Supplier shall provide a valid VAT invoice.
- 13.5 Where Charges for the Services are based on the cost of time and materials at rates set out in the Purchase Order, the Supplier shall maintain and provide to Arca complete and accurate records of the time spent and materials used in providing them and attach such records to the relevant invoice.
- 13.6 Subject to compliance by the Supplier with the foregoing provisions of this Condition 13, Arca shall pay the Charges as invoiced within 30 days of receipt of the invoice.
- 13.7 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against Arca in order to justify withholding payment of any amount in whole or in part. Arca may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Arca to the Supplier.

#### **14 Intellectual property rights**

- 14.1 The Supplier warrants that:
  - 14.1.1 the Supplier has all Intellectual Property Rights, permissions, licences and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and
  - 14.1.2 in respect of the Deliverables, the Supplier has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Arca, it has full and unrestricted rights to transfer full title to all such items to Arca.
- 14.2 Unless otherwise provided in the Specification, the Supplier grants to Arca, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including all Deliverables.
- 14.3 The Supplier shall, promptly at Arca's request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as Arca may from time to time require for the purpose of securing for Arca the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to Arca in accordance with the Contract.
- 14.4 Arca reserves to itself or its licensors all Arca Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Supplier any rights in Arca Materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Supplier to carry out its obligations under the Contract.

#### **15 Indemnity**

- 15.1 The Supplier shall indemnify, and shall keep indemnified, Arca in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by Arca as a result of or in connection with:
  - 15.1.1 any claim made against Arca for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Deliverables or Services with the Contract;



- 15.1.2 any claim made against Arca arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier;
  - 15.1.3 any claim made against Arca arising out of, or in connection with the negligence of the Supplier or its Representatives whilst on, entering, or leaving the Premises;
  - 15.1.4 any claim made against Arca for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, Arca's use of the Services;
  - 15.1.5 all damage to Arca's property or the Premises caused by the Supplier or its Representatives (including any damage or destruction to, corruption of, or loss of data held by Arca);
  - 15.1.6 any breach of Data Protection Law by the Supplier or its Representatives; and
  - 15.1.7 any claim made against Arca by a third party resulting from, or arising out of any breach by the Supplier of its obligations under Conditions 14 or 17.
- 15.2 The Supplier shall not be liable to Arca for any losses, damage or injury to the extent that they are caused by or arise directly out of the act or omissions of Arca in breach of its obligations under the Contract.

## **16 Insurance**

- 16.1 For the duration of the Contract, the Supplier shall maintain (or procure the maintenance of) in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier or by a Contractor under or in connection with the Contract, including death or personal injury, or loss of or damage to property.
- 16.2 The insurance required under Condition 16 shall include as a minimum:
- 16.2.1 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim and unlimited in the aggregate in any one period of insurance;
  - 16.2.2 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim and unlimited in the aggregate in any one period of insurance;
  - 16.2.3 professional indemnity insurance with a limit of not less than two million pounds (£2,000,000) per claim. Professional indemnity insurance must be maintained for a period of 6 years following the end of the contract or service delivery thereafter; and
  - 16.2.4 product liability insurance (where relevant) with a limit of not less than [two] million pounds [(2,000,000)] per claim.
- 16.3 The Supplier shall, at the request of Arca, produce to Arca a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Supplier has complied with its obligations under this Condition 16.
- 16.4 The Supplier shall not do or permit anything, or make any omission, which might cause any insurance to be voided.
- 16.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities incurred in connection with the Contract.
- 16.6 The Supplier shall inform Arca in writing whenever there is any change to the insurance referred to in this Condition 16 (including any change in the scope or level of cover or the identity of the insurer).

## **17 Confidentiality**

- 17.1 Subject to Condition 17.2, the Supplier shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by Arca.
- 17.2 The Supplier undertakes:
- 17.2.1 to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this Condition 17.
  - 17.2.2 that the Supplier and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract;
  - 17.2.3 that any person employed or engaged by the Supplier in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of Arca;
  - 17.2.4 to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Condition 17; and
  - 17.2.5 that, without prejudice to the generality of the foregoing, neither the Supplier nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.
- 17.3 The provisions of Condition 17 shall not apply to any information which:
- 17.3.1 is or becomes public other than by breach of this Condition 17 or
  - 17.3.2 is in the possession of the Supplier without restriction on disclosure before the date of receipt from the disclosing person; or
  - 17.3.3 is independently developed by the Supplier without access to the Confidential Information; or
  - 17.3.4 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

## **18 Termination**

- 18.1 Without limiting its other rights or remedies, Arca may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 18.1.1 the circumstances set out in Conditions 9.1 or 23.3 or 32 apply;
  - 18.1.2 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of receipt of written notice of the breach;
  - 18.1.3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 18.1.4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 18.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 18.1.6 the Supplier (being an individual) is the subject of a bankruptcy petition order;
  - 18.1.7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 18.1.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
  - 18.1.9 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 18.1.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
  - 18.1.11 the Supplier becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);
  - 18.1.12 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 18.1.3 to Condition 18.1.11 (inclusive);
  - 18.1.13 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
  - 18.1.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 18.2 Without limiting its other rights or remedies, Arca may at any time terminate the Contract in whole or in part by giving the Supplier at least one month's written notice, in which case Arca shall pay the Supplier for any Services performed up until the date of termination, but shall not be liable for any anticipated profits or any other loss in respect of the termination.

## **19 Consequences of termination**

- 19.1 On expiry or termination of the Contract or any part of it for any reason the following shall apply:
  - 19.1.1 where the Services are terminated, the Supplier shall immediately deliver to Arca all Deliverables, whether or not then complete, and return all Arca Materials to Arca. If the Supplier fails to do so, then Arca may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of the Deliverables and/or Arca Materials. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose; and
  - 19.1.2 the accrued rights and remedies of the parties as at termination shall not be affected,

including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

- 19.2 The following Conditions shall survive expiry or termination and shall continue in full force and effect: 1, 2.2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39 and any other Condition which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

## **20 Publicity**

- 20.1 The Supplier shall not make any press announcements or publicise the existence or terms of the Contract without Arca's prior written consent and shall ensure the observance of the provisions of this Condition 20 by its Representatives.
- 20.2 Arca shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Supplier.

## **21 Dispute resolution**

- 21.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:
- 21.1.1 the dispute shall first be referred, on the request of either party, to a senior manager within each of the parties; and
  - 21.1.2 if the dispute cannot be resolved by the parties' senior managers within 10 Business Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation to be conducted in accordance with Condition 21.2.
- 21.2 The following provisions shall apply to any such reference to mediation:
- 21.2.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
  - 21.2.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
  - 21.2.3 to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.
- 21.3 If the parties are able to resolve the dispute through mediation under this Condition 21, the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.
- 21.4 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 21.5 Nothing in this Condition 21 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
- 21.6 The Supplier shall continue to provide the Services and to perform its obligations under

the Contract notwithstanding any dispute or the implementation of the procedures set out in this Condition 21.

## **22 Conflict of interest**

- 22.1 The Supplier shall take all appropriate steps to ensure that neither it nor any of its Representatives is placed in a position where (in the reasonable opinion of Arca) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Supplier or its Representatives and, on the other hand, such persons' duties owed to Arca under the provisions of the Contract.
- 22.2 The Supplier must disclose to Arca full details of any actual or potential conflict of interest in writing and comply with any reasonable instructions of Arca in connection with their resolution.

## **23 Corruption**

- 23.1 The Supplier undertakes to:
- 23.1.1 comply with all applicable laws and regulations and codes relating to anti bribery and anti corruption including, but not limited to, the Bribery Act 2010;
  - 23.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - 23.1.3 comply with Arca's anti corruption policies disclosed to the Supplier from time to time;
  - 23.1.4 ensure that any of its Representatives associated with the supply of the Services comply with this clause 23; and
  - 23.1.5 immediately notify Arca if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.
- 23.2 For the purposes of clause 23.1, the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
- 23.3 Arca shall be entitled to terminate the Contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Representative:
- 23.3.1 offers or agrees to give any person working for or engaged by Arca or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and Arca or any Public Body, including its award to the Supplier and any of the rights and obligations contained within it;
  - 23.3.2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by Arca or any other Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Arca before the Contract is entered into;
  - 23.3.3 breaches the undertaking set out in clause 23.1; or
  - 23.3.4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 23.4 For the purposes of Condition 23.1, "loss" shall include, but shall not be limited to:

23.4.1 Arca's costs in finding a replacement Supplier.

23.4.2 direct, indirect and consequential losses.

23.4.3 any loss suffered by Arca as a result of a delay in its receipt of the Deliverables and / or Services.

## **24 Audit**

24.1 The Supplier shall keep and maintain until six years after the Contract has come to an end, or for such longer period as may be specified by Arca in writing from time to time:

24.1.1 all Information relating to the Contract.

24.1.2 full and accurate records of the following:

- (a) the Services provided under the Contract;
- (b) all Charges paid by Arca; and
- (c) such other information as Arca specifies in writing from time to time.

24.2 The Supplier shall on request afford Arca, Arca's Representatives or Arca's auditors such access to such information or records (including the information referred to in Conditions 24.1.1 and 24.1.2) as may (in the reasonable opinion of Arca) be required by Arca in order to comply with its legal obligations (including its obligations under FOIA and its obligations in connection with the Best Value Duty).

## **25 Discrimination**

25.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in the provision of the Services.

25.2 The Supplier shall take all reasonable steps to secure the observance of Condition 25.1 by all of its Representatives employed in the performance of the Contract.

25.3 The Supplier shall:

25.3.1 have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to Arca on a regular basis as agreed with Arca; and

25.3.2 actively endeavour to achieve a workforce representative of the ethnic diversity of the area.

## **26 Human rights**

26.1 The Supplier shall (and shall use its reasonable endeavours to procure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.

26.2 The Supplier shall undertake, or refrain from undertaking, such acts as Arca requests so as to enable Arca to comply with its obligations under the Human Rights Act 1998.

## **27 Data Protection Law**

27.1 The Supplier guarantees that they comply with the requirements set in place by the Data Protection Act 2018, which includes provisions set out in the EU General Data Protection Regulation (GDPR) 2016, and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause Arca to breach any of its obligations under Data Protection Law.

- 27.2 During the duration of the Contract, Arca will remain the data controller, with the Supplier being the data processor. All decisions on how the relevant Personal Data is to be processed will be made by Arca in consultation with the Supplier and must be evidenced in writing and signed on behalf of both Parties.
- 27.3 Arca requires that the Supplier will undertake the processing of the supplied data for the period of the Contract, or other timeframe if less than the Contract duration.
- 27.4 Arca are providing data to the Supplier for processing by the Supplier in accordance with the Contract.
- 27.5 Arca will supply a specific set of information which will form part of an information sharing agreement.
- 27.5.1 Arca requires the Supplier to record this information in an Information Asset Register which clearly states the legal basis for processing, the source of the information, and whether it is shared with anyone.
- 27.6 If the Supplier, pursuant to its obligations under the Contract, processes Personal Data (as defined in the Data Protection Act 2018 and GDPR) on behalf of Arca, the Supplier shall:
- 27.6.1 process the Personal Data only in accordance with written instructions from Arca;
- 27.6.2 process the Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under the Contract;
- 27.6.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 27.6.4 notify Arca promptly if it becomes aware of any breach of any of its measures put in place under this Contract;
- 27.6.5 ensure that people processing the data are subject to a duty of confidence;
- 27.6.6 obtain prior written consent from Arca in order to transfer the Personal Data to any third party for the provision of the Services;
- 27.6.7 only engage sub-processors with the prior consent of Arca and under a written Contract;
- 27.6.8 ensure that any personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in Condition 27;
- 27.6.9 ensure that none of those personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the other party;
- 27.6.10 notify Arca immediately if it receives:
- 27.6.10.1 a request from a Data Subject (as defined in the Data Protection Act 2018) to have access to that Data Subject's Personal Data; or
- 27.6.10.2 a compliant or request relating to the other party's obligations under Data Protection Law;

- 27.6.11 provide Arca with full co-operation and assistance in relation to any complaint or request made, including by providing the other party with full details of the complaint or request: and
  - 27.6.12 assist Arca in providing subject access and allowing data subjects to exercise their rights under the Data Protection Act/GDPR;
  - 27.6.13 not transmit or process Personal Data outside the United Kingdom without the prior written consent of the other party and, where the other party so consents to a transfer;
  - 27.6.14 delete or return all Personal Data to Arca as requested at the end of the Contract;
  - 27.6.15 submit to audits and inspections, provide the controller with whatever information it needs to ensure that both the Supplier and Arca are meeting their Article 28 obligations and notify Arca's controller immediately it is asked to do something infringing the GDPR or other data protection law of the UK.
  - 27.6.16 ensure that any systems used to process Personal Data on behalf of Arca are fully tested and accredited by an authorised company on an annual basis.
  - 27.6.17 ensure that any systems used have proactive monitoring in place to identify any breach proactively.
  - 27.6.18 ensure that there is a procedure in place to secure and supply any audit information or log files associated with any breach.
- 27.7 The Supplier agrees to indemnify, and shall keep indemnified, Arca against any liability, costs, expenses, losses, claims or proceedings whatsoever arising under any statute or at common law or for breach of Contract in respect of:
- 27.7.1 damage to property, real or personal, including any infringement of third party intellectual property rights; and
  - 27.7.2 injury to persons, including injury resulting in death; and any direct economic or financial loss
  - 27.7.3 any direct economic or financial loss arising out of, or in connection with any act, omission or default of the Supplier, its staff, agents or sub-contractors in relation to the Data, except in so far as such damages or injury shall be due to any negligence of Arca.

## **28 Freedom of information**

- 28.1 The Supplier acknowledges that Arca is subject to the requirements of FOIA and EIR and shall assist and co-operate with Arca (at the Supplier's expense) to enable Arca to comply with its obligations under FOIA and EIR. The Supplier shall act in accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.
- 28.2 The Supplier shall and shall procure that its Representatives shall:
  - 28.2.1 transfer any Request for Information to Arca as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
  - 28.2.2 provide Arca with a copy of all Information in its possession or power in the form that Arca requires within five Working Days (or such other period as Arca may specify) of Arca requesting that Information; and
  - 28.2.3 provide all necessary assistance as reasonably requested by Arca to enable Arca to respond to a Request for Information within the time for compliance set out in section



10 of FOIA or regulation 5 of EIR.

- 28.3 Arca shall be responsible for determining (in its absolute discretion) whether any Information:
- 28.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;
- 28.3.2 is to be disclosed in response to a Request for Information,
- and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by Arca.

- 28.4 The Supplier acknowledges that Arca may be obliged under the FOIA or EIR to disclose Information:

28.4.1 without consulting with the Supplier, or

28.4.2 following consultation with the Supplier and having taken its views into account.

- 28.5 Where Condition 29.4.2 applies Arca shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.

## **29 Transfer of services**

- 29.1 Where Arca intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement supplier, the Supplier shall use all reasonable endeavours to ensure the seamless transition of the Services to Arca or a replacement supplier and to ensure that the transition is effected with the minimum of disruption to Arca.
- 29.2 The Supplier shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, report and any information, whether held in electronic or written form, which Arca (acting reasonably) considers necessary.

## **30 Notice**

- 30.1 Any notice to be served on either of the parties hereto by the other shall be sent by pre-paid recorded delivery or first class post or by e-mail<sup>1</sup> to the address of the relevant party as detailed in the Contract or, such other address as notified by one party to the other in writing from time to time.

## **31 Severance**

- 31.1 If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of Arca it may be severed from the rest of the Contract which shall remain in full force and effect unless Arca in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event Arca shall be entitled to terminate the Contract by 10 Business Days' written notice to the Supplier.

## **32 Waiver and accumulation of remedies**

- 32.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

- 32.2 Unless a right or remedy of Arca is expressed to be an exclusive right or remedy, the exercise of it by Arca is without prejudice to Arca's rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under or in connection with the Contract. 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.
- 32.3 Arca's rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

### **33 Variations**

- 33.1 Subject to Condition 5, neither Arca nor the Supplier shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.

### **34 Assignment or sub-contracting**

- 34.1 The Supplier shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without Arca's prior written consent.
- 34.2 The Supplier shall not sub-contract the performance of the Services or any part of them without Arca's prior written consent and any such consent shall not relieve the Supplier of any of its obligations under the Contract.
- 34.3 Where the Supplier enters into a sub-contract with a third party in connection with the Contract, it shall cause a term to be included in such sub-contract that requires payment to be made of undisputed sums by the Supplier to the sub-contractor within a specified period not exceeding 30 [thirty] days from the receipt of a valid invoice.
- 34.4 Where the third party enters into a sub-contract with another third party in connection with the Contract, it shall cause a term to be included in such sub-contract that requires payment to be made of undisputed terms by the third party to the sub-contractor within a specified period not exceeding 30 [thirty] days from the receipt of a valid invoice.
- 34.5 Arca may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations.

### **35 Law and jurisdiction**

- 35.1 The Contract shall be construed and be subject to English law and the exclusive jurisdiction of the English Courts.

### **36 Rights of third parties**

- 36.1 No person other than Arca or the Supplier shall have any rights under the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

### **37 Business Continuity Plan**

- 37.1 The Supplier must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.
- 37.2 The Supplier must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify Arca as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.