

Mitie Purchase Terms and Conditions (Works)

1. Definitions and interpretation

1.1 In these Mitie Purchase Terms and Conditions, the following definitions shall apply:

Agreement: means these Mitie Purchase Terms and Conditions, Contract Form, any purchase order, Schedule or annexure to it from time to time for the Contractor to provide Works;

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

Change of Control: has the meaning given to it in section 1124 of the Corporation Tax Act 2010;

Commencement Date: means the date this Agreement comes into force;

Contract Form: means the contract form as executed by Mitie and the Contractor;

Contractor: means the person or firm as detailed in the Contract Form and/or purchase order from whom Mitie purchases the Works;

Deliverables: means all documents, products and materials developed by the Contractor and/or its agents, contractors, suppliers, sub-contractors and/or employees as part of or in relation to the Works in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

Direct Losses: means all damages, losses, indebtedness, claims, actions, expenses, costs (including, without limitation, any reasonable and properly incurred legal or professional services costs), proceedings, demands and charges whether arising under statute, contract or at common law, excluding any Indirect Losses;

Goods: means the goods (or any part of them), including without limitation any Deliverables, set out in the Contract Form and/or purchase order;

Goods Specification: means any specification for the Goods, including any related plans and drawings, that is agreed in writing by Mitie and the Contractor;

Group Company: means and includes each and any subsidiary or holding company of Mitie and each and any subsidiary of a holding company of Mitie, and any reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006;

Indirect Losses: means loss of profits and/or revenue, loss of production, loss of business, loss of business opportunity, any special loss or any claim for consequential loss or for indirect loss of any nature;

Intellectual Property Rights: means any patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Invoice Instructions: means the Mitie and HMRC vendor invoice instructions as are in force at the Commencement Date and which are incorporated as part of the Mitie Policies and HMRC guidance;

Key Personnel: means the individuals appointed or employed by the Contractor from time to time as listed or referenced in the Contract Form and/or purchase order;

Mitie: means the entity detailed on the purchase order to which the Works relate;

Mitie Policies: means the Mitie standard policies and procedures as are in force at the Commencement Date and as may be amended from time to time and are available to the Contractor at <http://www.mitie.com/sustainability/governance-and-management/policies> including but not limited to policies and procedures relating to anti-bribery, privacy and/or data protection, anti tax-evasion and anti-slavery;

Price: has the meaning given to it in Clause 9.1;

Replacement Services: means any goods or services ordered by Mitie from a third-party contractor in substitution for any of the Works which the Contractor has failed to provide in accordance with the terms of this Agreement following the expiry, termination, partial termination or default on the part of the Contractor, of such Agreement;

Schedule: means any schedule to this Agreement;

Services: means the services, including without limitation any Deliverables, to be provided by the Contractor under this Agreement; and

Works: means Mitie's order for the supply of Goods and/or the provision of Services.

1.2 Clause, annexure and paragraph headings are for ease of reference and shall not affect the interpretation or construction of this Agreement.

1.3 The Contract Form, the Purchase Terms and Conditions (Works), any Schedule and any annexure, and purchase order form part of this Agreement and shall have full force and effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include any Schedule, any annexure, purchase order and the Contract Form. If any conflict exists between the terms and conditions of this Agreement and/or the Contract Form, the Contract Form shall prevail save in relation to Clause 2.1.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include bodies corporate, unincorporated associations and partnerships. A reference to any Party shall include that Party's personal representatives, successors and permitted assigns.

1.5 A reference to a statute, statutory provision or statutory instrument is a reference to it as amended, extended or re-enacted from time to time and to any regulations made under it.

1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.7 The words in these Mitie Purchase Terms and Conditions shall bear their natural meaning. The Parties have had the opportunity to take legal advice on the terms of these Mitie Purchase Terms and Conditions and no term shall, therefore, be construed contra proferentem.

2. Introduction and scope

2.1 This Agreement is made between Mitie and the Contractor where Mitie agrees to purchase Works from the Contractor and the Contractor agrees to provide such Works. The provision of such Works shall be in accordance with the terms and conditions of this Agreement unless made and accepted by Mitie in writing.

2.2 These Mitie Purchase Terms and Conditions will apply to the exclusion of any other terms or conditions contained in any other document and/or other communication (whether received prior to or subsequent to the issue of this Agreement) or which are implied by trade, custom, practice or course of dealing used by the Contractor. The provision of any order confirmation and/or acknowledgement and/or the provision of the Works shall constitute acceptance of the terms and conditions of these Mitie Purchase Terms and Conditions.

2.3 The benefit (subject to the burden) of an order placed may be taken by any Group Company and the terms and conditions of this Agreement may be enforced by any of them, in each case either as principal or as the duly authorised agent for any of the other Group Companies. This is done to assist the effective processing and administration of each Agreement and does not in any way affect the Contractor's rights.

2.4 The terms and conditions of this Agreement shall apply to the supply of both Goods and Services in so far as they are applicable to the provision of such services.

3. Works

3.1 The Works shall be provided in the quantities, by the times and at the locations set out in the Contract Form or purchase order or otherwise agreed with Mitie in writing and Mitie shall not be obliged to accept any incomplete delivery or any Work in excess of the amounts ordered.

3.2 The Contractor shall be the non-exclusive supplier of the Works to Mitie for the term of this Agreement. The Contractor acknowledges that Mitie makes no guarantee or representation as to any minimum value or volume of the Works required during the term of this Agreement.

3.3 Unless specifically provided for in the Contract Form or purchase order, the Contractor shall ensure that the Works are fully compatible with Mitie's equipment and/or property.

3.4 The Contractor acknowledges that Mitie relies on the skill and judgment of the Contractor in the supply of the Works and the performance of its obligations under this Agreement.

3.5 The Contractor shall not depart from this Agreement unless the Contractor has obtained Mitie's written approval to do so. The Contractor shall make any reasonable amendments to the Works required by Mitie and, unless agreed in writing by Mitie, any such amendments shall not increase the Price. If Mitie requires an amendment to this Agreement that would result in a reduction in the Price, the Contractor shall notify Mitie of the resulting reduction in the Price and shall pass on the monetary value of any such sum, amount or any other benefit received directly to Mitie by way of a cost reduction under this Agreement or a cash payment to Mitie. The parties agree that Mitie may request from the Contractor written evidence assessing the reduction in the Price resulting from the amendment and/or showing how the reduction in the Price was calculated and that it was calculated on a fair and reasonable basis.

3.6 Where the Contractor is to provide formal progress reports to Mitie under this Agreement, the Contractor shall provide such reports at the times and in such form as may be specified by or as otherwise requested by Mitie. The submission and acceptance of progress reports shall not prejudice the rights of Mitie under any other provision of this Agreement.

3.7 The Contractor shall be deemed to have satisfied itself as regards the nature and extent of the Works, including but not limited to the time necessary to complete the Works, access to the location(s) where the Works are to be provided or performed, and the personnel and equipment necessary to provide or perform the Works.

3.8 The Contractor shall at all times in its performance of the Works, act in accordance with any relevant specification, law or regulatory requirement and shall supply, where relevant and appropriate, a certificate of conformance with any relevant specification confirming conformance with all appropriate regulatory approvals and health and safety requirements.

3.9 The Contractor shall at all times in its performance of the Works have regard to the good reputation of Mitie and in performing the Works shall not damage Mitie's reputation, goodwill and/or custom.

4. Provision of the Goods

4.1 The Contractor shall ensure that the Goods shall:

a. correspond with their description and any applicable Goods specification set out in the Contract Form and/or purchase order;

b. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Contractor or made known to the Contractor by Mitie, expressly or by implication, and in this respect Mitie relies on the Contractor's skill and judgment;

c. where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and

d. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

4.2 Unless otherwise stated in the Contract Form or purchase order, where the Goods are to be delivered by the Contractor, the point of delivery shall be when the Goods are removed from the Contractor's transporting vehicle:

a. on the date specified in the Contract Form or purchase order or, if no such date is specified, on the date agreed between Mitie and the Contractor;

b. during Mitie's normal hours of business on a Business Day, or as otherwise instructed in writing by Mitie;

c. at the location specified in the Contract Form or purchase order or such other location as instructed in writing by Mitie before delivery, and the Contractor shall offload the Goods as directed by Mitie.

4.3 Where the Goods are to be collected by Mitie, the point of delivery shall be when the Goods are loaded onto Mitie's transporting vehicle.

4.4 Delivery will be deemed to be incomplete if the Contractor fails to provide Mitie with all the documentation or training necessary for the safe and proper operation or intended use of the Goods and Mitie shall have the right to inspect and test the Goods at any time before delivery.

4.5 The issue by Mitie of a receipt for the Goods shall not constitute any acknowledgment of the condition, quantity or nature of the Goods.

4.6 The Contractor must ensure all Goods are suitably packaged, marked in a proper manner and in accordance with any Mitie instructions, statutory requirements and any requirements of the carriers.

Mitie shall not be obliged to return any packaging materials for any Goods whether or not they are accepted by Mitie.

4.7 If the Goods require the carrying out of tests, installation or training, delivery shall not be deemed to be complete until such tests have been passed, all Goods installed or training delivered to Mitie's unconditional satisfaction and the Contractor shall provide to Mitie upon request with copies of all test reports and all data discovered as a result of testing.

4.8 If Mitie installs any Goods supplied to it, the Contractor shall supply in advance of delivery a functional description of each part of the Goods, together with sufficient drawings and instructions to allow Mitie to install, operate and maintain the Goods including details of any special environmental controls required to ensure that the Works meet any relevant specification.

5. Provision of the Works

5.1 In providing the Works, the Contractor shall:

- a. co-operate with Mitie in all matters relating to the Works, and comply with all instructions of Mitie;
- b. perform the Works with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
- c. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with this Agreement;
- d. ensure that the Works and/or Deliverables will conform with all descriptions and specifications set out in the Contract Form or purchase order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by Mitie;
- e. provide all equipment, tools and vehicles and such other items as are required to provide the Works;
- f. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Works or transferred to Mitie, will be free from defects in workmanship, installation and design;
- g. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations (including anti-bribery, anti-slavery and anti-tax evasion laws and regulations); and
- h. observe all health and safety rules and regulations and any other security requirements that apply at any of Mitie's or a Mitie customer premises.

5.2 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Agreement in respect of the Works.

5.3 Where the Contract Form or purchase order specifies the time of performance or delivery of the Works, time for such performance or delivery shall be of the essence.

5.4 The Contractor shall notify Mitie if any delivery or performance is likely to be delayed beyond the date or service level specified in the Contract Form or purchase order or, if no such date is specified in the Contract Form or purchase order, beyond the date which had been agreed between Mitie and the Contractor. If the Contract Form or purchase order provides for the payment of liquidated damages for delays in performance or delivery then these shall apply. If not, then the provisions of Clause 5.5 shall apply.

5.5 Where Clause 5.3 applies and time is of the essence, failure by the Contractor to promptly notify Mitie of any likely delay shall entitle Mitie to terminate without liability all or any part of the order set out in the Contract Form or purchase order. Mitie shall also be entitled to compensation for any Direct Losses resulting from such failure and/or delay. Save where Clause 5.3 applies, if any delay which is promptly notified to Mitie does or is likely to exceed ten (10) days, Mitie shall be entitled to terminate without liability on its part all or any part of the order set out in the Contract Form or purchase order and/or (unless the delay is due to Force Majeure (as set out in Clause 25 below)) to compensation for any resulting Direct Losses.

5.6 In addition to any other right Mitie may have under this Agreement or any other contract between it and the Contractor, Mitie shall be entitled to postpone the date of delivery or performance for whatever period it thinks fit upon giving notice in writing to the Contractor. The Contractor shall not make any additional charges for providing or performing the Works where Mitie exercises this right, unless the Contractor can demonstrate to the reasonable satisfaction of Mitie, providing a written statement and supporting evidence, that such additional charges are unavoidable due to the proposed postponement. In such circumstances Mitie shall be entitled to terminate this Agreement immediately without any liability whatsoever if it determines (at its sole discretion) that the increase in charges is not reasonable.

5.7 If the Works are delivered or performed in instalments, Mitie may treat this Agreement either as a single contract and not severable, or it may elect to terminate the whole of any unfulfilled part of this Agreement without any further liability to the Contractor.

5.8 The Contractor shall liaise with Mitie (and any third parties designated by Mitie) regularly and at such intervals as Mitie may request in connection with the Works. The Contractor shall provide Mitie's nominated representative(s) with access to observe performance of the Works at all key stages in their development.

5.9 If an inspection by Mitie at any time after delivery by the Contractor establishes that all or any part of the Works supplied does not comply with all the requirements of this Agreement, Mitie may (without limitation) reject the Works supplied, return it to the Contractor and require replacement or rectification, or require re-performance of the Works and in each case recover its losses, costs and expenses from the Contractor.

5.10 Where the Contractor attends site to carry out the Works and is unable to gain access to the service area or to successfully complete the Works due to access restrictions or the acts and/or omissions of authorised representatives of Mitie on site (a "Wasted Journey"), the Contractor undertakes and agrees to use its best endeavours to take all steps to contact an authorised representative of Mitie on site to gain access and/or resolve any on-site restrictions.

5.11 In the event of a Wasted Journey where the Contractor has been unable to successfully complete the Works, the Contractor shall only invoice Mitie for its reasonable charges incurred, which shall not exceed the Contractor's transport only charge.

5.12 The Contractor is not entitled to charge any Wasted Journey charge where the Contractor has attempted to attend a site outside of the service times agreed by Mitie in writing or where the Contractor is unable to demonstrate compliance with Clause 5.10. Where service times have not been specified by Mitie, the agreed service times shall be deemed to be 0900 to 1700 hours Monday to Friday (excluding public holidays).

5.13 The Contractor shall give Mitie not less than 30 days' written notice where it proposes to alter the scheduled service times agreed by Mitie or, where service times have not been specified, outside of the standard service times set out in Clause 5.12 above. Where the Contractor's revised service times will no longer satisfy the requirements of Mitie, Mitie reserves the right to terminate this Agreement in accordance with Clause 21.1.

5.14 Mitie shall be entitled to deduct from the Price or reclaim from the Contractor any reasonable costs associated with the procurement of any Replacement Services or any costs associated with the Works which the Contractor has failed to provide in accordance with the terms of this Agreement. These costs will include, without limitation, any premium paid and/or transportation or delivery charges required to achieve the timeframe originally specified for the provision of the Works in this Agreement.

6. Hazardous goods

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

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

7. Remedies

7.1 If the Contractor fails to complete the delivery or performance of any Works in accordance with this Agreement, for any reason other than Force Majeure, without prejudice to any other right and remedies it may have, Mitie shall be entitled to:

- a. reject the Works (in whole or in part) whether or not title has passed and to return them to the Contractor at the Contractor's own risk and expense;
- b. require the Contractor to remedy such defect at its own cost within seven (7) days including without limitation to repair or replace any rejected Works (in which case the Contractor shall also be liable to Mitie for any costs arising out of any damage caused by the Contractor in remedying such defects and shall also provide free of charge any additional Works necessary to remedy the Works);
- c. recover from the Contractor any costs incurred by Mitie in having such defects remedied;
- d. cancel any Works which have not been delivered or provided by the date required and require a full refund of any part of the Price which has been paid; and/or
- e. charge to the Contractor any additional costs, losses or expenses which Mitie may incur due to the Contractor's failure to deliver or perform the correct Works in accordance with this Agreement and the Contract Form, including, but not limited to, any additional costs incurred by Mitie in obtaining any Replacement Services from a third party and any payments contractually due to third parties as a result of the Works not being so provided by the specified delivery date.

7.2 Clause 7.1 shall extend to any substituted or remedial services and/or repaired or replacement Works supplied by the Contractor.

7.3 Mitie's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

8. Ownership and risk

8.1 Subject to Clauses 8.2, 8.3 and 8.4, the risk and title in any Goods which form all or any part of the Works shall pass to Mitie when delivered and the time of delivery shall be determined in accordance with Clauses 4 and/or 5.

8.2 Risk of loss or damage to, and title in any Goods rejected by Mitie in accordance with this Agreement shall revert to the Contractor upon notification of that rejection by Mitie.

8.3 Any equipment and materials provided by the Contractor for the provision of the Works shall remain the property of the Contractor. Mitie will take all reasonable care of such equipment but no liability is accepted for any loss or damage which is not proven to have directly been caused by the negligence or default of Mitie.

8.4 Mitie accepts no liability whatsoever for any equipment and/or materials provided by the Contractor, including for ordinary wear and tear, and the Contractor is expected to provide a replacement if the equipment or materials no longer meet any relevant standard that is expected.

9. Price and payment

9.1 The price for the Works shall be as set out, described and/or calculated in or pursuant to the Contract Form or purchase order and will be fixed unless the Contract Form or purchase order provides otherwise (the "Price"). The Price shall be exclusive of VAT but inclusive of all other taxes, charges and expenses including packaging, shipping, carriage, insurance, testing and delivery of any Goods to the delivery address and any duties, imposts or levies.

9.2 The Price for any Works shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Works and unless otherwise agreed in writing by Mitie, the Price shall include all costs and expenses of the Contractor directly or indirectly incurred in connection with the performance of the Works.

9.3 Subject to Clauses 2.1 and 2.2 of the Contract Form, no increase to the Price may be made (whether on account of increased material, labour or transport costs, fluctuations in exchange rates, legislative or regulatory changes, or otherwise) without the prior written consent of Mitie. Mitie shall be entitled to any discount of prompt payment, bulk purchase or volume of purchase customarily granted by the Contractor, whether or not shown on its own terms and conditions of sale.

9.4 Unless specified otherwise in the Contract Form or purchase order, the Contractor shall invoice the contracting Mitie entity at any time after the later of the due date for completion and/or delivery of the Works and the actual date of such completion and/or delivery. The invoice shall comply with the Invoice Instructions and shall state clearly that it is an invoice and include the contract reference number, the full name of the Mitie contracting legal entity and VAT number, the period to which the Price relates, the date, the contact name at Mitie, a description of the Works to which the invoice relates, a valid Mitie purchase order number, the Contractor's name and registered company VAT number and such other information as Mitie may reasonably require. Any incomplete invoice will be invalid. For the avoidance of doubt, Mitie shall not be bound by a price other than as set out, described and/or calculated in or pursuant to the Contract Form. In the event of a conflict between the price set out in an invoice/purchase order and the Price set out, described and/or calculated in or pursuant to the Contract Form and this Agreement, the latter will prevail. The Contractor shall not be entitled to claim any adjustment to the Price arising from any error generated by Mitie in a purchase order.

9.5 In consideration of the supply of the Works by the Contractor, Mitie shall pay all undisputed invoiced amounts within sixty (60) days of receipt of the date of a correctly rendered and valid invoice to a bank account nominated in writing by the Contractor other than in the specific circumstances where the flow down provisions of the Public Contracts Regulations 2015 apply.

9.6 Mitie shall not be obliged to pay and/or consider any invoice that:

- a. does not comply with the Invoice Instructions;
- b. exceeds a valid Mitie purchase order;
- c. is not addressed to the correct Mitie contracting legal entity; and/or
- d. does not quote a valid Mitie purchase order number or is received more than ninety (90) days after the Goods have been delivered and/or Services completed.

9.7 All Coupa invoices must be processed following the instructions located at: <https://mitiesuppliers.com/mitie-supplier-faq/using-coupa/>. Any other invoices where the purchase order has not been raised on the Coupa system must be sent by email to the email address stipulated by Mitie from time to time which at the time of these Mitie Purchase Terms and Conditions is:

- a. for SAP invoices: MITIEAP-Workwise@mitie.com
- b. for Oracle invoices: MITIEAP-Workwise@mitie.com
- c. for CAFM invoices: invoices.finance@mitie.com

9.8 Unless the Contract Form or purchase order provides otherwise, or where the invoice is disputed by Mitie, payment shall be made within sixty (60) days of receipt of the date of a correctly rendered and valid invoice. Except with Mitie's prior written consent, the Contractor shall not factor or assign any invoice submitted to Mitie pursuant to this Agreement. If Mitie disputes any Contractor invoice (or part thereof) in good faith then Mitie shall notify the Contractor in writing (including email) of such dispute (but no later than 7 days prior to the payment due date) and Mitie may withhold payment of such disputed invoices pending resolution of such dispute in accordance with the terms hereof. The Parties agree that this payment mechanism constitutes an adequate mechanism that replaces the regime set out in the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy Economic Development and Construction Act 2009 and Scheme for Construction Contracts, insofar as this legislation applies to the Works being delivered by the Contractor.

9.9 If Mitie has agreed to reimburse the Contractor for expenses incurred in the performance of the Services then the Contractor shall provide receipts or such other evidence as Mitie may require to support any claim for such expenses.

9.10 Without prejudice to any other right or remedy Mitie may have, Mitie reserves the right to set off any liability of Mitie and/or a Group Company to the Contractor, whether either liability is present or future, liquidated or unliquidated arising under this Agreement or any other agreement which may exist from time to time between them, against any other liability of the Contractor to Mitie under the Contract Form (including in respect of any other Agreements). All amounts due under this Agreement or against Mitie under any other agreement shall be paid by the Contractor to Mitie in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.11 Mitie shall deduct the cost of any Goods which are returned by Mitie or any Services rejected by Mitie from the next payment due to the Contractor. Where the return of any Goods or the rejection of any Services puts the Contractor into a debt position and Mitie is unable to deduct the balance from a payment due, Mitie will issue a debit note and shall require settlement of the debit note by the Contractor within fourteen (14) days of the date of the debit note.

9.12 The Contractor shall not suspend the supply of the Works unless the Contractor is entitled to terminate this Agreement for failure to pay undisputed sums of money. Any suspension of Works which is permitted under the terms of this Agreement shall not entitle the Contractor to suspend the supply of Works under any other agreement or purchase order.

9.13 Interest shall be payable on any amount due and payable under this Agreement (including, without limitation, any rebate) which is not paid by the due date for its payment. Such interest shall accrue on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time and shall be calculated on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. This Clause 9.13 shall not apply to payments that the defaulting party disputes in good faith.

9.14 The Contractor shall keep and maintain complete, accurate and up to date records relating to the supply and performance of the Works and the operation of this Agreement, including without limitation, records of:

- a. the Works provided and the supply and/or status of such Works;
- b. any expenditure charged, paid and/or reimbursed;
- c. any rebates, discounts or beneficial payment terms in place with the Contractor's sub-contractors and/or suppliers (if any) which relate to the Works and/or this Agreement;
- d. compliance with the Mitie Policies and Invoice Instructions; and
- e. any files, documents, correspondence, agreements, specifications, accounts, accounting records (including without limitation, all invoices, purchase orders, rebates, receipts for all charges and expenses) relating to the Works and/or this Agreement,

and shall ensure that its sub-contractors and/or suppliers (if any) retain the same such records relating to the Works and/or this Agreement.

9.15 The records referred to in Clause 9.14 shall be:

- a. retained by the Contractor and/or its sub-contractors and/or suppliers (if any) throughout the duration of this Agreement and for at least six (6) years following the termination of this Agreement;
- b. adequately protected against loss, corruption and/or damage by the Contractor and/or its sub-contractors and/or suppliers (if any); and
- c. made available to Mitie and/or Mitie's employer(s) (if any) on twenty-four (24) hours' written notice (including email).

9.16 The Contractor shall permit Mitie, its employer(s), its employees, nominated representatives, advisers and independent auditor to examine on twenty-four (24) hours' written notice (including email) and within normal working hours such records as are to be kept by the Contractor and/or its sub-contractors and/or suppliers (if any) under Clause 9.14 (including access to and inspection of electronically stored information relating to the Works and/or this Agreement) and any other documents in the possession of the Contractor and/or its sub-contractors and/or suppliers (if any) relating to this Agreement. Such examination shall be permitted at the offices of the Contractor or at such other places where the records may be kept. If a physical examination takes place the Contractor shall make available to Mitie an office suitable for at least three representatives of Mitie

with adequate facilities, including, welfare facilities, desks, chairs, personal computer and access to photocopiers and printers. The Contractor and/or its sub-contractors and/or suppliers (if any) shall permit Mitie, its employer(s), employees, nominated representatives, advisers and independent auditors to take copies of such records and shall promptly provide proper explanations to any questions raised relating to the contents of these records. The Contractor and/or its sub-contractors and/or suppliers (if any) shall afford Mitie such assistance as it shall reasonably require in order to understand the records.

9.17 The Contractor shall indemnify Mitie on a continuing basis against any liability, including, without limitation, interest, penalties, expenses or costs incurred, which is levied, demanded or assessed on Mitie at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this Clause 9.17 shall be paid by the Contractor to Mitie not less than five (5) days before the date upon which the tax or other liability is payable by Mitie.

10. Continuous improvements

10.1 The Contractor undertakes to use its best endeavours to adopt a policy of continuous improvement throughout the term of this Agreement in relation to the Works, pursuant to which it shall regularly review the Works to:

- a. improve the quality, scope and efficiency of the Works; and
- b. reduce the Price, any charges and Mitie's costs, without adversely affecting the Works or any standards or levels applicable to the Works.

10.2 Without prejudice to its other obligations under this Clause 10, if the Contractor or any of its sub-contractors and/or suppliers develops or implements for any other customer any new technology or product feature in respect of works similar to the Works, the Contractor shall promptly offer that new technology or product feature to Mitie. The Contractor shall notify Mitie of each such development or implementation in accordance with Clause 27.6.

11. Variations

11.1 The Contractor shall accept any reasonable variation to the specification for the Works requested by Mitie. The price shall be adjusted and agreed in writing by Mitie to reflect the variation having regard to the rates and prices used in this Agreement or, where these are not relevant, to what is fair and reasonable.

11.2 Neither Party shall be bound by any variation to this Agreement unless and until it is confirmed in a variation to the Contract Form signed by an authorised representative of each Party.

12. Intellectual property

12.1 In respect of the Works and any goods that are transferred to Mitie as part of the Works under this Agreement, including without limitation the Deliverables or any part of them, the Contractor warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Mitie, it will have full and unrestricted rights to sell and transfer all such items to Mitie.

12.2 The Contractor hereby assigns absolutely by way of present and (to the extent permissible by law) future assignment with full title guarantee and free from all third party rights and at no cost to Mitie, all Intellectual Property Rights which are created by the Contractor or on the Contractor's behalf throughout the term of this Agreement in the products of the Works, including without limitation the Deliverables.

12.3 The Contractor grants Mitie a non-exclusive, worldwide, perpetual, transferable, royalty-free licence (including the ability to grant sub-licences) in respect of all Intellectual Property Rights in the Works and which do not belong to Mitie under this Clause 12. The Contractor may use those Intellectual Property Rights only as properly and reasonably required in connection with the supply of the Works for Mitie.

12.4 The Contractor shall obtain all releases, waivers and authorisations throughout the world necessary for Mitie to make full and free use of the Works.

12.5 The Contractor shall, and shall procure that the Contractor's employees, consultants, agents, suppliers and/or sub-contractors shall do all such further acts and things and execute any such documents as Mitie may require in order to secure the full benefit of this Agreement, including all rights, title and interest in and to the Intellectual Property Rights assigned to Mitie in accordance with this Clause 12 and to confirm those releases, waivers and authorisations referred to in Clause 12.4.

12.6 The Contractor shall not use or permit the use of any of the intellectual property belonging to Mitie (or Mitie's licensors), including without limitation logos or other Intellectual Property Rights without the prior written agreement of Mitie.

12.7 The Contractor will indemnify and hold Mitie harmless against any damages (including costs) that may be awarded or agreed to be paid in respect of any claim or action that any Works supplied by the Contractor infringes any intellectual property right of any third parties.

13. Warranties

The Contractor warrants that:

- a. it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
- b. it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Mitie, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third party licences and consents in respect of any of the Works;
- c. all of the Works supplied by it under this Agreement:
 - i. will be in full accordance with any specification set out in the Contract Form, purchase order or which Mitie may provide to the Contractor from time to time;
 - ii. will be provided in accordance with the required service levels or key performance indicators (if any) set out or referred to in the Contract Form, purchase order or which Mitie may provide to the Contractor from time to time;
 - iii. will not infringe any Intellectual Property Rights or other rights of any third party anywhere in the world;
 - iv. will be provided by appropriately qualified and trained personnel with all due skill, care and diligence and to such standards of quality and or specifications stated in the Contract Form, purchase order or (if none are so stated) as is reasonable for Mitie to expect from the Contractor;
 - v. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and will be fit for any purpose held out by the Contractor or made known to the Contractor by Mitie, expressly or by implication, prior to the date when the Contract Form is signed or purchase order issued;

vi. where applicable, will be free from all defects in design, material and workmanship and will correspond with any samples provided; and

vii. will comply with all applicable statutory and regulatory requirements including but not limited to anti-bribery, anti-slavery, anti-tax evasion laws and General Data Protection Regulation (EU) 2016/679 ("GDPR") and warrants that Mitie has all necessary consents to process any data pursuant to and as required by its obligations under this Agreement.

14. Compliance

14.1 In supplying the Works the Contractor shall, and shall procure that the Contractor's employees, consultants, agents, suppliers and sub-contractors shall, comply with, all applicable laws (including but not limited to the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017), standards, guidance, codes of practice (whether voluntary or mandatory), statutory requirements or other regulations and with the Invoice Instructions and the Mitie Policies. In all cases the costs of compliance shall be borne by the Contractor and the Contractor hereby indemnifies Mitie against all losses, costs, expenses, damages, liabilities, demands, claims, actions and proceedings which Mitie may incur arising out of any breach by the Contractor of the provisions of this Clause 14 howsoever arising.

14.2 If the Contractor is not the manufacturer and if required by Mitie the Contractor shall assign the benefit of any warranty or guarantee given by the manufacturer or the Contractor's supplier relating to the Works.

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

14.4 The liabilities of the Contractor under this Clause 14 shall be in addition and without prejudice to any other rights or remedies of Mitie (whether arising in contract, tort, at common law, under statute or otherwise).

15. Further obligations

15.1 The Contractor shall:

a. comply (and will procure that its employees, agents, suppliers and sub-contractors comply) with all applicable laws, statutes, regulations, and codes that are applicable, including, without limitation, those relating to anti-bribery, anti-corruption and anti-tax evasion including but not limited to the Bribery Act 2010, the Modern Slavery Act 2015, GDPR and the Criminal Finances Act 2017 (the "Relevant Requirements");

b. comply (and will procure that its employees, agents, suppliers and sub-contractors comply) with the Mitie Policies, Invoice Instructions, any anti-bribery policy, any anti-slavery policy, any privacy and/or data protection policy and any anti-tax evasion policy applicable to the Contractor's industry as Mitie or the relevant industry body may update from time to time;

c. access and read on a regular basis throughout the term of this Agreement (and will procure that its employees, agents, suppliers and sub-contractors access, read and are trained on a regular basis throughout the term of this Agreement) the Mitie Policies, the Invoice Instructions, any anti-bribery policy, any anti-slavery policy, privacy and/or data protection policy and any anti-tax evasion policy applicable to the Contractor's industry as Mitie or the relevant industry body may update from time to time, to ensure that they are familiar with, up to date and aware of any changes or amendments to the Mitie Policies, Invoice Instructions, any anti-bribery policy, any anti-slavery policy, privacy and/or data protection policy and any anti-tax evasion policy which is applicable to this Agreement;

d. have and shall maintain in place throughout the term of this Agreement its own policies, procedures, training and audits to ensure compliance with the Relevant Requirements, the Mitie Policies and the Invoice Instructions, and it will enforce them where appropriate;

e. notify Mitie immediately if for any reason whatsoever it cannot access the Mitie Policies or Invoice Instructions;

f. immediately report to Mitie any actual, potential or suspected breach of the obligations in this Clause 15 including but not limited to requests or demands for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Agreement; and

g. within one month of the date of the Contract Form and annually thereafter, certify to Mitie in writing signed by an officer of the Contractor, compliance with this Clause 15 and the Contractor shall provide such supporting evidence of compliance as Mitie may reasonably request.

For the avoidance of doubt, the Contractor and its employees, agents, suppliers and sub-contractors are deemed to have accessed, read and complied with all Mitie Policies and the Invoice Instructions on a continuing basis throughout the term of this Agreement unless it has notified Mitie in writing that it is unable to do so before the Commencement Date.

15.2 The Contractor shall ensure that any person associated with the Contractor who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this Clause 15 (the "Relevant Terms"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to Mitie for any breach by such persons of any of the Relevant Terms.

15.3 Breach of this Clause 15 shall be deemed a material breach under Clause 21 and Mitie may terminate all or any part of this Agreement without any liability by notice to the Contractor.

16. Personnel

16.1 Mitie reserves the right to refuse access to any premises controlled by Mitie or a Mitie customer to any person employed by the Contractor or any sub-contractor whose admission would in the opinion of Mitie or a Mitie Customer be undesirable.

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

16.3 The decision of Mitie on whether any person is to be refused admission to any premises under its control and on whether the Contractor has complied with the obligations set out in Clause 16.2 shall be final and conclusive.

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

16.5 At any time during the continuance of this Agreement Mitie may require the Contractor to provide to Mitie (or any other person nominated by Mitie) within fourteen (14) days, such information as Mitie or Mitie's nominee may reasonably require in connection with the employment or engagement of the Employees. This Clause 16.5 is without prejudice to Clause 16.6 below.

16.6 The Contractor will procure that there will be no transfer of employment of any of the Employees to Mitie or any person who provides services to Mitie (a "Future Service Provider") following the termination of this Agreement or the termination of any of the Works by the Contractor (directly or indirectly) and on or prior to any such termination the Contractor shall ensure that all Employees are redeployed elsewhere in the Contractor's or the Contractor's sub-contractors' business or are dismissed at the Contractor's expense.

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

16.8 The Contractor acknowledges that the Key Personnel of the Contractor listed or referred to in the Contract Form are essential to the proper provision of the Works to Mitie. The Key Personnel shall not be released from supplying the Works without Mitie's prior written agreement, except where this is unavoidable because of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

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

17. Mitie property

17.1 Any property which is issued by or on behalf of Mitie or a Mitie customer to the Contractor in connection with this Agreement shall remain the property of Mitie and shall be used solely in connection with this Agreement and not for any other purpose without the prior written agreement of Mitie.

17.2 All Mitie and Mitie customer's property shall be deemed to be in good condition when received by or on behalf of the Contractor unless it notifies Mitie to the contrary within five (5) days of the date it receives such property. The Contractor shall return such property promptly to Mitie on the earlier of the completion of the Works or the termination of this Agreement and it shall be responsible for all loss or damage caused to such property from whatsoever cause.

17.3 The Contractor may be permitted to use accommodation provided by Mitie or a Mitie customer. Such accommodation shall be used purely for the purposes of providing the Works. Any such accommodation shall be kept clean and not damaged in any way. The Contractor shall also pay for any services made available to the accommodation and used by the Contractor, including but not limited to electricity, gas, water and telephone lines. The Contractor shall immediately vacate the accommodation when instructed to do so by Mitie. The accommodation shall be left in a clean and tidy condition and in a state of repair equivalent to that it was in when the Contractor was initially given access and any costs incurred by Mitie in repairing the same shall be recoverable from the Contractor as a debt.

18. Indemnity

18.1 The Contractor shall indemnify Mitie fully from and against all losses, claims, proceedings, demands, charges, actions, damages, costs, expenses and any other liabilities whatsoever suffered or incurred by Mitie and/or any Group Company (including any professional or legal expenses incurred) that may arise out of, or in connection with:

a. the performance or non-performance by the Contractor of its obligations under the Contract Form or any Agreement or the presence of any Contractor or any staff on Mitie's premises;

b. any act or omission or negligence of the Contractor (including the Contractor's employees, consultants, agents, suppliers and sub-contractors) in supplying, installing, testing, commissioning or performing the Works;

c. any breach of any warranty given by the Contractor in relation to the Works including but not limited to the warranties set out in Clause 13;

d. any liability Mitie might incur under the Consumer Protection Act 1987, Consumer Rights Act 2015, Consumer Contracts Regulations 2013 or General Product Safety Regulations 2005 in respect of the Works or any other items in which the Works are incorporated; and

e. any liability to any third party arising in connection with the Works which Mitie may incur whether by court proceedings or by a bona fide out-of-court settlement.

18.2 The Contractor shall not be liable to Mitie for any damage or injury to the extent that the same is caused by or arises out of Mitie's negligent acts or omissions.

18.3 The Contractor shall be liable for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct breach of this Agreement by the Contractor.

19. Insurance

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

a. Employers liability insurance of not less than £5 million or the minimum level required by law;

- b. Public liability insurance of not less than £10 million or the minimum level required by law;
- c. Product liability insurance of not less than £5 million or the minimum level required by law; and
- d. Professional indemnity insurance of not less than £2 million or the minimum level required by law.

19.2 The Contractor shall promptly provide to Mitie copies of all insurance policies referred to in Clause 19 or a broker's verification of insurance to demonstrate that such insurances are in place, together with copies of receipts or other evidence of payment of the latest premiums due under those policies.

20. Limitation of liability

20.1 Nothing in the Contract Form or any Agreement shall exclude or limit either party's liability for:

- a. death or personal injury arising from that party's negligence;
- b. fraud or fraudulent misrepresentation;
- c. any other liability that cannot be limited or excluded by law; and/or
- d. any liability under Clauses 18.1d.

20.2 Save as set out in Clause 20.1, Mitie's aggregate liability to the Contractor (whether in tort, including gross negligence, or for breach of contract or statutory duty or otherwise) under or in connection with the Contract Form and all Agreements, shall be limited to the lesser of:

- a. 100% of the price for the Works (including VAT) under all Agreements which have accrued during the previous 12 months; or
- b. £100,000 (one hundred thousand pounds),

and Mitie shall not be liable in any circumstances for any Indirect Losses suffered or incurred by the Contractor under or in connection with the Contract Form and all Agreements.

21. Termination

21.1 Mitie may terminate all or any part of this Agreement without any liability immediately by notice to the Contractor in the following circumstances:

- a. if the Contractor breaches any term of this Agreement, the Invoice Instructions or any Mitie Policy and (where in Mitie's reasonable opinion the breach can be remedied without any delay to the time for supply under Clauses 4 or 5) fails to remedy the breach by that time for performance or (if earlier) within five (5) days of Mitie so requiring;
- b. the Contractor gives Mitie not less than thirty (30) days' written notice that it proposes to alter (i) the Price and/or (ii) its scheduled service times which Mitie considers will no longer be appropriate;
- c. in the performance of the Works, the Contractor has contravened Clause 3.8 of this Agreement (including, but not limited to, any contravention of health and safety legislation);
- d. if there is a Change of Control of the Contractor;
- e. if the Contractor ceases to or threatens to cease to carry on business, the Contractor's financial position is such that either the Contractor, the Contractor's directors, members or creditors as appropriate take or are entitled to take steps to institute formal insolvency proceedings with respect to the Contractor of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- f. if the Contractor offers or gives, or agrees to give, to any employee, agent or representative of Mitie any gift, inducement or consideration of any kind in connection with this Agreement or any other agreement with Mitie, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such other agreement; or
- g. if the Contractor breaches any of the Relevant Requirements or the Mitie Policies.

21.2 Without prejudice to its rights under Clause 21.1, Mitie shall have the right to terminate this Agreement for convenience at any time on giving the Contractor at least one (1) months' notice in writing or the Contractor by giving Mitie at least six (6) months' notice in writing.

21.3 On termination of this Agreement for any reason, the Contractor shall immediately deliver to Mitie all Deliverables whether complete or not, and return any materials, equipment, tools, drawings, specifications and data (including but not limited to personal data) supplied by Mitie to the Contractor within 30 days of termination. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement. If the Contractor fails to do so, then Mitie may pursue such rights and actions available to it in order to take possession of them.

21.4 Clauses 6.2, 9.10, 9.14 to 9.17 (inclusive), 12, 16.4, 16.7, 18 to 24 (inclusive) and 27 shall survive termination of this Agreement.

21.5 Notwithstanding the service of a notice to terminate this Agreement, the Contractor shall continue to fulfil its obligations under this Agreement until the date of expiry or termination of this Agreement.

21.6 If this Agreement is terminated for any reason all rights granted to the Contractor under this Agreement will immediately terminate.

22. Transition to another contractor

22.1 During the period of any termination notice pursuant to this Agreement, and in any case for a reasonable period, to be determined at the sole discretion of Mitie, thereafter, the Contractor shall act professionally and reasonably and co-operate fully with the transfer of responsibility for and knowledge of the Works to Mitie or to any new contractor(s) of such services and/or goods the same or similar to the Works, and for the purposes of this Clause 22 the meaning of the term "co-operate" shall include, without limitation:

- a. liaising with Mitie and/or any new contractor(s), and providing reasonable assistance and advice concerning the Works and their transfer to Mitie or to such new contractor(s);
- b. allowing any new contractor(s) access to its business, its records and documents relating to the Works (at reasonable times and on reasonable notice) but not so as to interfere with or impede the provision of the Works by the Contractor; and
- c. providing to Mitie and/or to any new contractor(s) all and any knowledge, information, stock, records or documentation concerning the Works which is reasonably required for the efficient transfer of responsibility for their performance but information which is commercially sensitive to the Contractor or subject to a legally binding confidentiality agreement shall not be provided (and for the purpose of this Clause 22, "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the

Contractor and thereby prejudice the business of the Contractor and shall not include any information relating to the employees of the Contractor.

22.2 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Works to a new contractor and/or contractors and/or to Mitie (as the case may be) and the Contractor shall take no action at any time during the term of this Agreement or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult any such transfer.

23. Dispute Resolution Procedure

23.1 If any dispute (including but not limited to non-payment of any Contractor invoices) arises in connection with this Agreement (a "Dispute"), an authorised representative of the Contractor and Mitie shall, within thirty (30) days of a written request from one party to the other, meet in good faith at a Mitie office to resolve the Dispute.

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

23.3 The following principles shall apply to the mediation:

a. unless the Contractor and Mitie otherwise agree, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of either Party in any future proceedings;

b. if the Contractor and Mitie reach agreement on the resolution of the Dispute, the agreement shall be recorded in writing and binding on them once it is signed by duly authorised representatives of both Parties;

c. failing agreement, the Contractor and Mitie may invite the mediator to provide a non-binding but informative written opinion if the Parties provide consent to this in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties.

23.4 If the Parties fail to reach agreement by the conclusion of the mediation then the Parties shall be free to commence formal legal proceedings in the courts in relation to the Dispute. Nothing in this Clause 23 shall prevent (i) a Party seeking urgent injunctive relief from the courts where it considers this is necessary to protect its position or (ii) Mitie commencing proceedings at any time.

23.5 The Parties acknowledge that the Dispute Resolution Procedure and the provisions of this Clause 23 are a condition precedent to the issue of any valid claim in the courts of England, Wales and Scotland relating to unpaid Contractor invoices.

23.6 The Parties agree that if proceedings are issued by the Contractor in breach of this Clause 23, the Contractor shall pay Mitie's costs on an indemnity basis.

23.7 If the Contractor acts in breach of the Dispute Resolution Procedure and obtains default judgment (or judgment of any kind) in relation to any claim relating to unpaid invoices, the Contractor agrees that it will consent to setting aside of that judgment (and shall pay Mitie's costs on an indemnity basis).

23.8 If the Contractor issues proceedings in breach of this Dispute Resolution Procedure, then the Contractor shall (prior to any judgment having been entered) agree to an immediate stay of proceedings so that the meeting referred to above may take place.

24. Confidentiality

24.1 For the purposes of this Clause 24, "Confidential Information" means any information which has been designated as confidential by Mitie in writing or which because of its content ought to be considered as confidential (however it is conveyed or on whatever media it is stored), information the disclosure of which would, or would be likely to, prejudice the interests of Mitie, its trade secrets, Intellectual Property Rights or know-how and all personal data and sensitive data within the meaning of the Data Protection Act 2018, but does not include any information:

- a. which was public knowledge at the time of disclosure (otherwise than by breach of this Clause 24);
- b. which was in the possession of the Contractor, without restriction on its disclosure, before receiving it from Mitie;
- c. which is received from a third party (who lawfully acquired it) without restriction on its disclosure; or
- d. is independently developed without access to the Confidential Information.

24.2 The Contractor shall:

a. treat all Confidential Information belonging to Mitie as confidential and shall use its best endeavours to prevent its employees, consultants, agents, suppliers and sub-contractors from making any disclosure to any person of any such Confidential Information; and

b. not disclose any Confidential Information belonging to Mitie to any other person without the prior written consent of Mitie, except to such persons and to such extent as may be necessary for the performance of the Contractor's obligations under this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

24.3 The Contractor shall ensure that its employees, consultants, agents, suppliers, sub-contractors and professional advisors are aware of the Contractor's confidentiality obligations under this Agreement and that they comply with them.

24.4 The Contractor must not use any Confidential Information it received from Mitie otherwise than for the purposes of this Agreement.

24.5 If the Contractor fails to comply with this Clause 24 Mitie reserves the right to terminate this Agreement with immediate effect by notice in writing.

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

24.7 Without prejudice to the preceding provisions of this Clause 24, the Contractor warrants and undertakes that it shall not (and shall ensure that its employees, consultants, agents, suppliers and sub-contractors shall not) make, or permit any person to make, any statements or responses to public, media or official enquiries concerning this Agreement or the Works without the prior written consent of Mitie.

24.8 The Contractor warrants that it has taken and will continue to take all technical and organisational measures necessary to protect the information technology systems and data used in connection with the operation of the Contractor's business. Without limiting the foregoing, the Contractor has used and will continue to use best endeavours to establish and maintain and has established, maintained, implemented and complied with, reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against and prevent breach, destruction, loss, unauthorized distribution, hacking, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any information technology system or data used in connection with the operation of the Contractor's business. If the Contractor suspects or alleges any such breach of this Clause 24.8, it shall immediately inform Mitie in writing, giving all available details, and shall at its own cost and at the direction of Mitie take such steps as Mitie may reasonably require in order to minimise the loss which Mitie may otherwise suffer as a result of such breach.

25. Force majeure

Mitie shall have no liability to the Contractor, or be deemed to be in breach of this Agreement, for delay in performing, or failure to perform, any of its obligations under this Agreement as a consequence of any of the following events, where the event is outside Mitie's reasonable control:

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

26. Assignment and sub-contracting

26.1 The Contractor shall not assign, transfer, mortgage, charge, sub-contract or deal in any other manner with all or any of its rights, liabilities or obligations under this Agreement, whether in whole or in part, without first obtaining Mitie's prior written consent. Such consent, if granted shall not release the Contractor from any of its obligations and liabilities which may exist under this Agreement from time to time.

26.2 Mitie may assign, transfer or sub-contract any or all of its rights and obligations under this Agreement to another Group Company.

27. General

27.1 Mitie engages the Contractor as an independent contractor. Nothing in this Agreement shall create a partnership or the relationship of principal and agent or employer and employee.

27.2 The Contractor shall not and shall ensure that the Contractor's personnel shall not without the prior written consent of Mitie advertise or publicly announce that they are undertaking work for Mitie, nor make any public statement in respect of Mitie, or any of their customers, directors, officers, employees, associates, agents, representatives, sub-contractors, consultants or any of Mitie's or Mitie's business arrangements or any of the information obtained by the Contractor throughout the period of this Agreement.

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

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

27.5 A waiver of Mitie's rights shall not operate as a waiver of any subsequent breach or default and shall only be effective if given in writing. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, power or remedy available to that party and the rights, powers and remedies shall be cumulative.

27.6 All notices which are required to be given under this Agreement shall be in writing and shall be sent to the registered address of the recipient set out in the Contract Form or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 27.6 with a copy sent to Mitie Chief Procurement Officer and thecompanysecretary@mitie.com.

27.7 Notices may be delivered personally or by first class pre-paid letter and shall be deemed to have been served if by hand when delivered and signed for, if by first class post to an address in the United Kingdom 48 hours after posting and if by first class post to an address elsewhere ninety-six (96) hours after posting. A notice required under this Agreement shall not be validly given if sent by email or fax unless the clause in which the notice is being served states otherwise.

27.8 The Contract Form and Agreement constitutes the entire understanding between Mitie and the Contractor and supersedes all previous agreements between the parties relating to its subject matter. The Contractor has not relied on any representation or promise except as expressly set out in this Agreement.

27.9 For the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the Parties state that, save as set out in this Agreement, they do not intend any term of this Agreement to be enforced by third parties excluding the rights of any Mitie Group Company which shall be deemed to be incorporated into the "Mitie" party in these Mitie Purchase Terms and Conditions.

27.10 This Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and, subject to clause 23, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

27.11 The Contract Form and this Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each Party has executed at least one counterpart.