

S.B. Electronic Systems Limited – Standard Terms and Conditions

BACKGROUND

SBES shall supply the Deliverables as requested by the Customer in accordance with these Conditions.

1. DEFINITIONS

1.1 In these Conditions the following definitions shall have the following meanings:

“**SBES**” S.B. Electronic Systems Limited (company registration number 00920069) whose registered office is at Arden Grove, Harpenden, Herts AL5 4SL.

“**Agreement**” the agreement between SBES and the Customer for the supply of Deliverables comprising each Order Form, these Conditions, the Maintenance Service Annex Agreement and the Software Licence (as applicable).

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

“**Change Request**” a written request for a change to any provision of the Agreement made in accordance with clause 10.

“**Charges**” the charges to be paid by the Customer to SBES in respect of Deliverables as set out in the Order Form or as otherwise confirmed to the Customer in writing by SBES.

“**Commencement Date**” has the meaning given in clause 2.2.

“**Conditions**” these terms and conditions.

“**Customer**” the customer stated in the Order Form.

“**Customer Facilities**” all hardware, software, ancillary equipment, network/ ISDN points, computer and communications facilities, office, storage and other facilities owned or controlled by the Customer.

“**Deliverables**” the Equipment, Software, Maintenance Services and any ancillary goods and/or services to be provided by SBES as detailed in the Order Form or otherwise agreed in writing by SBES and the Customer.

“**Delivery Address**” the address stated in the Order Form to which Deliverables are to be delivered.

“**Documentation**” any specifications, technical manuals, user instructions or other documentation supplied by SBES in connection with the Deliverables.

“**Due Date**” has the meaning given in clause 4.2.

“**Equipment**” the hardware and other equipment to be supplied to the Customer as stated in the Order Form, including any software embedded within such equipment.

“**IP Rights**” intellectual property rights 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 right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case 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.

"Maintenance Services" the maintenance services detailed in the Order Form.

"Maintenance Services Annex Agreement" the terms of the agreement between SBES and the Customer for the supply of Maintenance Services.

"Manufacturer" any manufacturer or proprietor of a Deliverable other than SBES.

"Order Form" the order form specifying the Deliverables in a form specified by or acceptable to SBES.

"Software" any software (not being software embedded in the Equipment) supplied to the Customer for use in conjunction with Equipment.

"Software Licence" the terms of the licence granted by SBES to the Customer for the use of Software (whether or not annexed to the Order Form) together with any software embedded within Equipment.

"Total Loss" the Equipment is, in SBES' reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

"Working Hours" 9am to 5pm on Business Days.

1.2 In these Conditions, the following rules 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 personal representatives, 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. A reference to a statute or statutory provision includes any subordinate legislation made under that 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;

1.2.5 words in the singular include the plural and in the plural include the singular; and

1.2.6 headings do not affect the interpretation of these Conditions.

2. APPLICATION OF CONDITIONS/ SCOPE OF AGREEMENT

2.1 Each Order Form signed by the Customer and submitted to SBES shall be deemed to be an offer by the Customer to purchase Deliverables in accordance with these Conditions.

2.2 No offer to purchase contained in any Order Form shall be deemed accepted by SBES until SBES has provided the Customer with unconditional written confirmation of

acceptance or (if earlier) SBES delivers Deliverables to the Customer, at which time the Agreement shall come into existence ("**Commencement Date**").

- 2.3 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless agreed by SBES in writing. These Conditions are subject to change by SBES at anytime and without notice to the Customer, therefore the Customer is advised to review the Conditions each time the Customer submits an Order Form.

3. TERM

- 3.1 The Agreement shall continue unless and until terminated by either party in accordance with clause 13.

4. TERMS OF PAYMENT

- 4.1 In consideration of SBES supplying the Deliverables, the Customer shall pay the Charges to SBES.

- 4.2 Payment of Charges by the Customer to SBES shall be made in the manner and on the dates stated in the Order Form or (if not stated) not later than 30 days from any invoice date ("**Due Date**").

- 4.3 Charges are expressed exclusive of VAT and all other relevant duties and taxes which shall be paid by the Customer at the appropriate rate.

- 4.4 SBES reserves the right to increase the Charges at any time on written notice to the Customer, to reflect any increase in cost to SBES which is due to any factor beyond the control of SBES (including cost of labour and materials, foreign exchange fluctuation, currency regulation and alteration of duties).

- 4.5 In the event that the Customer fails to pay any sum by the Due Date, without limiting any other right or remedy that SBES may have under the Agreement, SBES reserves the right to charge interest on the overdue amount at the rate of 5% per annum above the then current HSBC Bank plc base rate accruing on a daily basis from the Due Date until the date that actual payment is made (irrespective of whether the date of payment is before or after any judgment or award in respect of the same).

- 4.6 Both parties acknowledge that time for payment of Charges is of the essence of the Agreement.

- 4.7 All payments to be made by the Customer under the Agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

5. DELIVERY AND INSTALLATION

- 5.1 SBES shall deliver the Deliverables to the Delivery Address.

- 5.2 SBES may deliver the Deliverables by instalments, which may be invoiced separately. Each instalment shall constitute a separate contract subject to the overriding terms of the Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

- 5.3 SBES shall use reasonable endeavours to deliver the Deliverables upon any delivery date indicated in the Order Form or as soon thereafter as is practicable, however all such

delivery dates are approximate only and time of delivery is not of the essence. If delivery is to take place before or after any delivery date indicated in the Order Form, SBES shall use reasonable endeavours to give the Customer not less than one Business Days' notice of the actual delivery date.

- 5.4 Delivery of the Deliverables shall be completed upon completion of off-loading at the Delivery Address.
- 5.5 Upon delivery the Customer shall make available to SBES (or SBES' delivery agent) free of charge such labour, equipment and Customer Facilities as are required to effect completion of delivery and, if applicable, installation of the Deliverables at the Delivery Address. Upon completion of delivery the Customer shall be solely responsible for the removal and disposal of all packing cases and other containers in which the Deliverables were delivered, and upon completion of installation the Customer shall be solely responsible for making good and cleaning the premises at which such installation has taken place.
- 5.6 SBES shall not be liable for any delay or failure in delivery of the Deliverables that is caused by the Customer's failure to provide SBES with adequate delivery instructions or any other instructions that are relevant to the supply of the Deliverables, and SBES reserves the right to charge the Customer reasonable additional delivery, transport and storage costs in the event of such delayed or failed delivery.
- 5.7 Unless the Customer notifies SBES in writing of a material fault in the Deliverables within seven (7) days following delivery, the Customer shall be deemed to have accepted the Deliverables. The Customer acknowledges and agrees that seven (7) days is a reasonable period for the purpose of inspecting the Deliverables and testing the same for material faults.

6. RISK AND OWNERSHIP OF EQUIPMENT

- 6.1 Risk in all Deliverables shall pass to the Customer upon completion of delivery to the Delivery Address.
- 6.2 Title to the Deliverables shall not pass to the Customer until all Charges payable in respect of the Deliverables and all VAT and other tax or duties thereon have been paid in full to SBES.
- 6.3 With effect from delivery and unless and until title to the Deliverables has passed to the Customer, the Customer shall insure the Deliverables against all risks to their full replacement value with such insurance company as SBES shall approve (such approval not to be unreasonably withheld) and the Customer shall provide a copy of the insurance certificate to SBES, without delay, which certificate shall have SBES endorsed thereon as loss payee.
- 6.4 If the Customer fails to effect or maintain the insurance required under clause 6.3 SBES shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose, and recover the same as a debt due from the Customer.
- 6.5 Unless and until title to the Deliverables has passed to the Customer, the Customer shall:
 - 6.5.1 not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal with or encumber the Deliverables;
 - 6.5.2 hold the Deliverables on a fiduciary basis as SBES' bailee; and

- 6.5.3 notify SBES immediately if it becomes subject to any of the events listed in clause 13.1.2.
- 6.6 If the Customer fails to make payment in full of any sum due hereunder by the Due Date or the Customer becomes subject to any of the events listed in clause 13.1.2 before title to the Deliverables has passed to the Customer, then SBES may (without prejudice to any other legal remedies it may have) at any time require the Customer to deliver up the Deliverables and shall, if the Customer fails to do so promptly, enter upon the Delivery Address or any other premises where the Deliverables is stored (without notice to the Customer) and remove the Deliverables.

7. CUSTOMER FACILITIES

- 7.1 Prior to delivery of any Deliverable and upon a date to be notified by SBES, SBES may inspect the Customer Facilities at the Delivery Address.
- 7.2 SBES shall indicate to the Customer in writing whether the Customer Facilities are suitable for the purpose of SBES supplying the Deliverables and, if the Customer Facilities are not suitable, the necessary steps to be taken by the Customer (at the Customer's expense) to make the Customer Facilities suitable.
- 7.3 The Customer shall use all reasonable endeavours to complete the necessary steps notified by SBES under clause 7.2 within 5 Business Days of notification by SBES.
- 7.4 SBES may perform repeat inspections in accordance with the procedure outlined in this clause 7 until SBES is satisfied that the Customer Facilities are suitable for the purpose of SBES supplying the Deliverables.

8. CUSTOMER'S OBLIGATIONS

- 8.1 In order to facilitate the supply of the Deliverables, the Customer shall:
- 8.1.1 ensure that the terms of the Order Form are complete and accurate and that the Deliverables are suitable for its requirements;
 - 8.1.2 provide SBES with access to the Delivery Address and make available to SBES free of charge all Customer Facilities requested by SBES;
 - 8.1.3 ensure that there are no restrictions on the use by SBES of soldering, power tools or other relevant installation equipment or methods;
 - 8.1.4 ensure that its employees, agents and contractors co-operate promptly and fully with SBES and its employees, agents and contractors;
 - 8.1.5 promptly provide SBES with all requested information and documents;
 - 8.1.6 take all reasonable steps to ensure the health and safety of SBES employees, agents and contractors subject to such employees, agents and contractors complying with any reasonable Customer health and safety policy notified in writing by the Customer;
 - 8.1.7 ensure that any IP Rights which SBES is required to use in order to supply the Deliverables are either proprietary to the Customer or properly licensed to the Customer, and that SBES is properly licensed to use or modify such IP Rights as required; and

- 8.1.8 indemnify SBES on demand from and against all losses, damages, costs and expenses suffered or incurred by SBES by reason of any claim made against SBES for actual or alleged infringement of any third party's IP Rights arising in connection with any breach by the Customer of clause 8.1.7 or otherwise in connection with the performance of SBES' obligations under the Agreement.
- 8.2 Following delivery of the Deliverables and unless and until title to Deliverables passes to the Customer, the Customer shall:
- 8.2.1 ensure that adequate electrical power is supplied to Equipment;
 - 8.2.2 arrange, at its own expense, for the provision of any equipment or services by its chosen network provider which may be necessary for the installation and operation of Equipment;
 - 8.2.3 use, store and maintain Deliverables in accordance with the Documentation;
 - 8.2.4 keep the external surfaces of Equipment clean and in good condition;
 - 8.2.5 operate Deliverables strictly in accordance with the Documentation and any instructions (written or oral) given by SBES and ensure that only competent and trained persons operate or use Deliverables;
 - 8.2.6 not make any addition, modification or adjustment to Deliverables without the prior written consent of SBES;
 - 8.2.7 fully observe the provisions the Software Licence and the Maintenance Service Annex Agreement;
 - 8.2.8 use only such media and consumables in connection with Deliverables as have been approved in writing by the Manufacturer or SBES (as applicable);
 - 8.2.9 take such steps (including compliance with all safety and usage instructions provided by SBES) as may be necessary to ensure, so far as is reasonably practicable, that Equipment is at all times safe and without risk to health when it is being installed, commissioned, used, cleaned or maintained;
 - 8.2.10 keep SBES fully informed of all defects and other material matters relating to Deliverables;
 - 8.2.11 not without the prior written consent of SBES, attach any Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building;
 - 8.2.12 keep the Deliverables in its possession within the United Kingdom and not re-locate any Deliverable without SBES' prior written consent;
 - 8.2.13 permit SBES or its duly authorised representative to inspect any Deliverable at all reasonable times, and for such purpose to enter upon the Delivery Address or any other premises at which a Deliverable may be located, and grant reasonable access and facilities for such inspection;
 - 8.2.14 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of SBES in any Deliverable;

- 8.2.15 not suffer or permit any Deliverable to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process; and
- 8.2.16 not use any Deliverable for any unlawful purpose.
- 8.3 The Customer shall indemnify SBES in full from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with the Customer's negligence, default or breach of the Agreement.

9. WARRANTIES

- 9.1 SBES warrants that on delivery and for a period of 12 months from the date of delivery, the Equipment will be free from material defects in materials and workmanship.
- 9.2 SBES shall replace any Equipment that does not comply with the warranty set out in clause 9.1, provided that:
 - 9.2.1 the Customer notifies SBES of any defect in writing within ten Business Days of the defect occurring;
 - 9.2.2 SBES is permitted to make a full examination of the alleged defect; and
 - 9.2.3 the defect did not materialise as a result of fair wear and tear, misuse, neglect, abuse, the use of unsuitable consumables in connection with the Deliverable, failure to follow the Documentation or any other written or verbal instructions relating to a Deliverable, any alteration or repair to a Deliverable without SBES' written approval or any other failure by the Customer to comply with its obligations under the Agreement.
- 9.3 Notwithstanding clauses 9.1 and 9.2, where a Manufacturer warranty exists in relation to a Deliverable and a defect occurs in that Deliverable, the Customer acknowledges that:
 - 9.3.1 the Customer shall be entitled only to such warranty or other benefit as SBES has received from the Manufacturer; and
 - 9.3.2 the Customer shall be solely responsible for exercising its rights and remedies under such warranty unless otherwise confirmed in writing by SBES.

10. CHANGE CONTROL

- 10.1 If either party identifies a requirement for a change to the Agreement and/ or any Deliverable it shall send a Change Request to the other party detailing the change requirements.
- 10.2 If sent by SBES, the Change Request shall state the effect such a change shall have upon the Deliverables, the Charges and/ or the Agreement. If sent by the Customer, the receipt of the Change Request by SBES will constitute a request to SBES to state in writing the effect such a change shall have upon the Deliverables, the Charges and/ or the Agreement. SBES shall use reasonable endeavours to supply such details within ten Business Days from receipt of a Change Request from the Customer.
- 10.3 In the event that the parties cannot agree whether to implement any change, SBES reserves the right, at its reasonable discretion, to make the ultimate decision as to whether or not a change is implemented. If the change is implemented, the relevant

Deliverables, Charges and/ or provisions of the Agreement shall thereafter be as amended by the implemented change.

11. IP RIGHTS & SOFTWARE

- 11.1 The Customer acknowledges that any and all of the IP Rights subsisting in, used in connection with or supplied in conjunction with the Deliverables shall be and shall remain the sole property of SBES or the Manufacturer (as applicable) and the Customer shall not at any time dispute such ownership. Nothing in the Agreement shall transfer title in any IP Rights in any Deliverable to the Customer or grant any licence save as stated in the Software Licence and in any licence provided by a Manufacturer.
- 11.2 The Customer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that SBES may consider necessary or desirable to perfect the right, title and interest of SBES and any Manufacturer (as applicable) in and to the IP Rights in the Deliverables.
- 11.3 In the event that new inventions, designs or processes (and any resulting IP Rights) evolve in performance of or as a result of the Agreement, the Customer acknowledges that the same shall be the property of SBES unless otherwise agreed in writing by SBES.

12. LIMITATION OF LIABILITY

The Customer's attention is particularly drawn to the provisions of this clause 12.

- 12.1 Nothing in the Agreement shall limit or exclude either party's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2 fraud or fraudulent misrepresentation; or
- 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 12.2 Subject to clause 12.1:
- 12.2.1 SBES shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any special, consequential or indirect losses, loss of revenue, loss of profit, loss of data, loss of goodwill, loss of business opportunity or loss of anticipated savings arising under or in connection with the Agreement, regardless of the form of action and of whether SBES knew or had reason to know of the possibility of the loss in question; and
- 12.2.2 SBES' total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100 per cent of the amount paid by the Customer to SBES in respect of the Deliverables that gave rise to such liability, during the 12 month period immediately preceding the date on which the claim arose.
- 12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

13. TERMINATION AND SUSPENSION

- 13.1 Notwithstanding any other provision of the Agreement and without limiting any other rights or remedies that the parties may have, SBES may immediately terminate the Agreement on written notice to the Customer if:
- 13.1.1 the Customer commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the Customer being notified in writing of the breach;
 - 13.1.2 the Customer enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade;
 - 13.1.3 a Force Majeure Event continues for a period of more than 3 months;
 - 13.1.4 any Deliverable is maintained or serviced by any party other than SBES or SBES' authorised agents or contractors;
 - 13.1.5 the Customer misuses or abuses any Deliverable; or
 - 13.1.6 any instalment of the Charges remains unpaid for five Business Days or more beyond the Due Date.
- 13.2 SBES is entitled to terminate the Agreement at any time without cause upon not less than three months written notice to the Customer.
- 13.3 Upon termination of the Agreement, however caused:
- 13.3.1 except where title to the Deliverables has passed to the Customer pursuant to clause 6.2, SBES' consent to the Customer's possession of the Deliverables shall terminate and the Customer shall deliver up the Deliverables to SBES;
 - 13.3.2 if the Customer fails to deliver up the Deliverables in accordance with clause 13.3.1 SBES may, by itself or through authorised agents or contractors, without notice and at the Customer's expense, retake possession of all or any Deliverables and for this purpose may enter any premises at which a Deliverable is located; and
 - 13.3.3 without prejudice to any other rights or remedies of the Customer, the Customer shall pay to SBES on demand:
 - (a) all Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.5; and
 - (b) any costs and expenses incurred by SBES in recovering any Deliverable and/or in collecting any sums due under the Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 13.4 Where:
- 13.4.1 the Agreement is terminated by SBES pursuant to this clause 13; or
 - 13.4.2 any repudiation of the Agreement by the Customer is accepted by SBES,

the Customer shall pay to SBES a sum equal to the whole of the Charges that would have been payable by the Customer to SBES in respect of the Deliverables if the Agreement had not been terminated less:

- (i) a reasonable discount for accelerated payment; and
- (ii) SBES' reasonable assessment of the market value of the Deliverables concerned.

13.5 Termination or suspension of the Agreement will be without prejudice to any accrued rights or obligations of either party.

14. CONFIDENTIAL INFORMATION

14.1 The Customer shall not, during and after termination of the Agreement, without the prior written consent of SBES, use or disclose to any other person any of SBES' information which is identified as confidential or which is confidential by its nature, including any Documentation or other written or verbal information (including computer code) which SBES may from time to time impart to the Customer relating to the Agreement, in any form of media.

14.2 The Customer shall, on termination of the Agreement, surrender or procure the surrender to SBES upon demand of all materials relating to such confidential information in the Customer's or its employees', agents' or contractors' possession.

15. FORCE MAJEURE

15.1 SBES shall have no liability to the Customer under the Agreement if SBES is prevented from or delayed in performing any obligation under the Agreement to the economic detriment of SBES, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of SBES or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Service Providers or sub-contractors ("**Force Majeure Event**").

15.2 SBES' obligation to perform the Agreement is deemed to be suspended for the period during which the Force Majeure Event continues, and SBES is entitled to an extension of time for performance for the duration of that period.

16. GENERAL

16.1 The Customer will not assign, sub-contract, charge or otherwise transfer to a third party any of its rights or obligations under the Agreement without the prior written consent of SBES. SBES may assign, transfer or sub-contract any of its rights or obligations under the Agreement without the prior written consent of the Customer.

16.2 Except as expressly set out in these Conditions a person who is not a party to the Agreement (a "**third party**") shall have no rights pursuant to the Agreements (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of the Agreement. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

16.3 No delay by either party in enforcing its rights will limit or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

- 16.4 No variation of the Agreement will be valid unless recorded in writing and signed by or on behalf of each party.
- 16.5 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.
- 16.6 Nothing in the Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise bind the other party in any way.
- 16.7 Each party will, at the request of the other party and at its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of the Agreement.
- 16.8 Any notice given under the Agreement:
- 16.8.1 shall be made in writing and either delivered personally or sent by recorded delivery to the party to whom the notice is addressed at its address as set out in the Agreement or such other address as a party may specify by notice in writing to the other party; and
- 16.8.2 in the absence of evidence of earlier receipt will be deemed to have been duly given:
- (a) if delivered personally, when left at the address referred to in clause 16.8.1; or
- (b) if sent by recorded delivery, at the time recorded by the delivery agent.
- 16.9 For the avoidance of doubt electronic mail is “writing” for the purpose of these terms and conditions but this will not prejudice the express requirements for delivery of notices under clause 16.8.
- 16.10 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of the Agreement.
- 16.11 The Agreement contains the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them, and the parties confirm that they have not entered into the Agreement on the basis of any representations that are not expressly incorporated in the Agreement. Nothing in the Agreement will operate to limit or exclude any liability for fraud.

17. DATA PROTECTION

- 17.1 Both parties acknowledge that for the purpose of General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time (together **Data Protection Legislation**), in the provision of Deliverables, the Customer is the data controller and SBES is the data processor (as defined in the Data Protection Legislation).
- 17.2 SBES will process personal data and sensitive personal data (both as defined in the Data Protection Legislation) (together **Data**) for the purpose and duration of SBES’s provision of Deliverables to the Customer or as otherwise permitted or required by the Agreement

or by the laws of any member of the European Union (EU) or by the laws of the EU applicable to the processing of Data (together **the Applicable Laws**).

- 17.3 Following the termination of the relevant Agreement and the expiry of any relevant limitation period, any period required by law, a regulatory body or recommended by any relevant code of practice, SBES will not retain any copy, abstract, precis or summary of any Data and will destroy its records and documentation accordingly on the expiry of such period.
- 17.4 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Data to SBES by the Customer and to enable SBES's lawful processing of the Data under the Agreement. A copy of such consents and notices shall be provided to SBES by the Customer as soon as reasonably practicable following request by SBES.
- 17.5 SBES shall, in relation to any Data processed in connection with the performance by SBES of its obligations under the Agreement:
- 17.5.1 process that Data only on the written instructions of the Customer or as expressly permitted in the Agreement. Where SBES processes Data as permitted or required by Applicable Laws, SBES shall use its reasonable endeavours to notify the Customer of this unless such Applicable Laws prohibit SBES from so notifying the Customer;
- 17.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Data and against accidental loss or destruction of, or damage to, Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of the technological development and the cost of implementing any measures;
- 17.5.3 take reasonable steps to ensure that all personnel who have access to and/ or process Data are obliged to keep the Data confidential; and
- 17.5.4 not transfer any Data outside of the European Economic Area (or any country deemed adequate by the Commission pursuant to Article 25(6) of Directive 95/46/EC) unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or SBES have provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) SBES complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Data that is transferred; and
 - (d) SBES complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Data;
- 17.5.5 assist the Customer (at the Customer's cost) in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 17.5.6 notify the Customer without undue delay on becoming aware of a Data breach;
 - 17.5.7 at the written direction of the Customer, delete or return Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Laws to store the Data; and
 - 17.5.8 maintain complete and accurate records and information to demonstrate its compliance with its obligations under the Agreement and make such records available to the Customer (at the Customer's cost) upon request in a timely manner.
- 17.6 The Customer authorises SBES to engaged another data processor to perform processing activities in respect of the Data on behalf of the Customer, to transfer or disclose any Data to any other party as it necessary for the provision of Deliverables and in such circumstances SBES shall engage such data processor under a written contract containing substantially the same obligations as in this Clause 17.
- 17.7 The Customer agrees that SBES may transfer Data:
- 17.7.1 to a third party purchaser of its business assets on reorganisation, sale or merger of the whole or any part of its business; and
 - 17.7.2 as reasonably required to obtain legal advice, comply with legal requirements, enforce or apply any agreements and protect the rights, property or safety of SBES, its employees, clients, customers and others.
- 17.8 The Customer acknowledges that SBES is reliant on the Customer for direction as to the extent to which they are entitled to use and process the Data. Consequently, SBES will not be liable for any claim brought by an individual arising from any action or omission by SBES, to the extent that such action or omission resulted directly from the Customer's instructions.

18. GOVERNING LAW AND JURISDICTION

- 18.1 The Agreement will be governed by and interpreted in accordance with the laws of England and Wales.
- 18.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Agreement.