



# N-SEA & UXOCONTROL

## General Purchase Terms & Conditions

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### – GENERAL PURCHASE TERMS & CONDITIONS –

#### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1. Definitions:

**Affiliate:** means any entity controlling, controlled by, or under common control with, another entity.

An entity will be deemed to control another entity if it either directly or indirectly has the ownership of fifty per cent (50%) or more of the issued share capital or any kind of voting rights in an entity, or possesses the power to direct, or cause the direction of, the management and policies of the latter.

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

**Charges:** the charges payable by Customer for the supply of the Services in accordance with clause 6 (Charges, payment and tax).

**Claim:** all claims, losses, damages, costs (including legal costs), expenses and liabilities howsoever arising.

**Client:** a client of any tier of the Customer.

**Client Group:** any Clients, their joint venture and consortium partners, its and their other contractors of any tier, the Affiliates of any of these, and the directors, officers, agents, and personnel of all of the foregoing.

**Commencement Date:** has the meaning given in clause 2.2.

**Confidential Information:** all business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to any of the Groups whether in digital, written, or any other form and all information, data, know-how, specifications, trade secrets, drawings, processes, formulae, designs, photographs, Intellectual Property Rights, samples and any other material disclosed by any member of a Group in connection with the Contract. Reference to Confidential Information shall also include those parts of all analyses, compilations, studies, interpretations and other documents which contain or are derived from such Confidential Information.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.6.

**Contract:** the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions. The way by which such a Contract may be entered into includes, but is not limited to, a purchase order.

**Contract Price:** the price payable for the proper performance of the Services.

**Control:** as defined above under definition of Affiliate.

**Customer:** an N-Sea and/or UXOcontrol company (as set out in the Contract).

**Customer Group:** The Customer, its other contractors of any tier, its and their Affiliates, and the directors, officers, agents and personnel of any of the foregoing. In case of UXOcontrol entities Customer Group includes the respective 50% shareholders of UXOcontrol B.V. and their other contractors of any tier, its and their Affiliates and their respective directors, officers, employees, invitees, servants and authorized agents. Customer Group's other contractors of any tier are understood to include the owners and operators of any vessel contracted via N-Sea Group B.V.

**Customer Materials:** has the meaning set out in clause 3.3(k).

**Deliverables:** all documents, products and materials developed and/or to be provided by the Supplier Group as part of or in relation to the Services (including any modifications or additions to Customer Materials) in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts). The Deliverables also include any items to be provided by the Supplier under the Contract, including but not limited to those as set out in the Specification.

**Force Majeure:** has the meaning set out in clause 13.2.

**Intellectual Property Rights:** 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, rights in computer software, database rights, rights to use, and right to have protected the confidentiality of, information (including 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.

**Mandatory Policies:** customer's business policies and codes set out at the end of these terms & conditions.

**Proposal:** a proposal for the supply of Services, including any such proposal made by the Supplier in response to a request for quotation issued by the Customer.

**Services:** the services and works, including any Deliverables, to be provided by the Supplier under and in accordance with the Contract, including but not limited to those as set out in the Specification.

**Specification:** the description or specification for the Services agreed in writing by Customer and the Supplier.

**Supplier:** the company or entity from whom Customer purchases the Services.

**Supplier Group:** The Supplier, its subcontractors and suppliers of any tier, its and their Affiliates, and the directors, officers, agents and personnel of any of the foregoing.



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### 2. BASIS OF CONTRACT

- 2.1. A Proposal by the Supplier shall be accepted by the written acceptance by the Customer through either a purchase order or a signed contract, at which point, and on which date the Contract shall come into existence (Commencement Date).
- 2.2. A Contract will only be entered into by written acceptance through either a purchase order or a signed contract, as set out in clause 2.1 above.
- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### 3. SERVICES

- 3.1. The Supplier shall from the date set in the Contract and for the duration of the Contract provide the Services to Customer in accordance with the terms of the Contract.
- 3.2. The Supplier shall meet any performance dates for the Services specified in the Contract or that Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates. The Supplier will without delay inform the Customer of any circumstances that delay or can reasonably be expected to delay performance of the Services. If at any time during the progress of the Services the Supplier's performance is inadequate to meet the requirements of the time schedule, the Customer may notify the Supplier, who shall immediately and always within 48 hours take such steps as necessary to improve performance and secure timely delivery. If the Supplier does not take adequate measures, the Customer may require the Supplier to take specific measures to meet the time schedule, which measures the Supplier shall undertake without additional cost to the Customer. Alternatively, the Customer can take such measures on the Supplier's behalf and account.
- 3.3. In providing the Services, the Supplier shall:
  - (a) co-operate with Customer in all matters relating to the Services, and comply with all instructions of Customer;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in both the Supplier's and Customer's industries, professions or trades, including delivering required documentation such as but not limited to testing reports, certification and safety documents;
  - (c) use personnel who are suitably skilled, qualified and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
  - (d) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (e) ensure that the Services and Deliverables will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose as expressed in the Contract or that otherwise may be reasonably expected in connection with the Services;
  - (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 Services or transferred to Customer, will be new and free from defects in workmanship, installation and design;
  - (g) where Contract is of a descriptive nature as to the general object of (any part of) the Services it does not provide an exhaustive detailing of each item or operation involved, and all activities and supplies that may be necessary to provide the Services as a whole are also understood to be part of the Services;
  - (h) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - (i) comply with all applicable laws, regulations, regulatory policies, orders regarding sanctions, trade embargoes and/or export control regulations, guidelines or industry codes which may apply from time to time to the provision of the Services, and with the Mandatory Policies;
  - (j) the Supplier shall uphold the highest standard of safety and shall observe all health and safety rules and regulations and any other security requirements that apply at any of Customer Group's or Client Group's premises. Supplier is held to provide adequate personal protection equipment;
  - (k) receive, unload, unpack and hold all property, materials, equipment and tools, drawings, specifications and data supplied by Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to Customer, and not dispose or use the Customer Materials other than in accordance with Customer's written instructions or authorisation. The Supplier will immediately upon receipt of any Customer Materials perform an inspection to identify any deficiencies, defects, damages or issues in respect of these. Failing any remarks notified in writing to the Customer at the time of delivery Customer Materials will be deemed to have been received by the Supplier in good order and free from any such matters. The Supplier will store such items separately and clearly mark any such items as being the property of the Customer, both in its administration and on the items themselves;



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- (l) not do or omit to do anything which may cause Customer to lose any licence, authority, consent or permission, and the Supplier acknowledges that Customer may rely or act on the Services;
- (m) be deemed to have satisfied itself, before entering into the Contract, as to the extent and nature of the Services, including but not limited to personnel, materials and equipment, plant, consumables and facilities required for the Services, the correctness and sufficiency of the rates and prices, general and local conditions, climatic, sea, other water and weather conditions, and all other matters which could affect progress or performance of the Services. Any failure by the Supplier to take account of matters which affect the Services will not relieve the Supplier from its obligations, and;
- (n) make any delivery based on Incoterms 2020 DDP (Delivery Duty Paid) at the location as set out in the Contract or as instructed by Customer, unless expressly otherwise stated in the Contract.
- (o) without delay provide the Customer all information requested in connection with this Agreement.

#### 4. CUSTOMER'S RIGHTS AND REMEDIES

##### 4.1. Change

The Customer shall have the right by written direction to make changes in the Services and/or Specification (which may include additions, omissions, substitutions and changes in quality, form, character, kind, position, dimension, level or line and changes in any method of construction). If the Supplier believes that such change affects the price or delivery date for such goods or services, the Supplier shall so notify the Customer without delay in writing (with adequate supporting documentation) before starting to implement the change and at the latest within five (5) days after receipt of said written direction. If the Supplier gives such a notice, the Supplier shall not start to implement such change unless thereafter instructed in writing by the Customer either issuing a revised purchase order or a change order confirmation under the Contract to perform said change, in which case the Supplier will proceed as per the instruction. The Customer and the Supplier shall without delay mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of a change. If Services are omitted, the Supplier's sole compensation will be for any Work completed in accordance with the Contract prior to the date of the change. An agreed change is deemed to contain all consequences thereof.

4.2. The Supplier's request for any adjustments shall be deemed waived unless submitted in writing without delay and in any event within five (5) days after the Supplier receives direction to make such changes. The Supplier shall not suspend performance of the unaffected portion of the Services while the Customer and the Supplier are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by the Customer. If instructed in writing by the Customer, the Supplier shall also comply with and already perform the change in accordance with the terms of the Contract during such time as the Supplier and the Customer require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Contract shall be binding upon the Customer nor will extra compensation be paid by the Customer unless the agreement or understanding is made in writing.

##### 4.3. Remedies

If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the whole or part of the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

4.4. Without prejudice to any other rights available to it, if the Services are not performed by the applicable date, the Customer may, at its option, claim or deduct 1% of the Contract price (or such a different amount as set out in the Contract) by way of liquidated damages for each day of delay in performance of the Services up till and including the day on which the Services are performed, up to a maximum of 15% of the total price of the Contract (or such a different amount as set out in the Contract). The parties hereby agree that such liquidated damages represent a reasonable and genuine pre-estimate of the losses which may be sustained by the Customer if the Supplier fails to meet the performance date and is not a penalty. The Customer claiming or deducting liquidated damages shall not limit the obligation of Supplier to perform its obligations and complete the Services.

4.5. If the Supplier has supplied Services that do not comply with the requirements of clause 3.3 or in the reasonable opinion of Customer there are circumstances that cause him to believe this will be the case then, without limiting or affecting other rights or remedies available to it, Customer shall have one or more of the following rights:

- (a) to suspend or terminate the whole or part of the Contract for the Supplier's account with immediate effect by giving written notice to the Supplier;
- (b) to return Deliverables to the Supplier at the Supplier's own risk and expense;



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- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by Customer arising from the Supplier's failure to comply with clause 3.3.

4.6. These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.7. The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and at law.

### 5. CUSTOMER'S OBLIGATIONS

5.1. The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information in its possession as it can make available for the provision of the Services as the Supplier may reasonably request. Unless agreed otherwise, the Customer is not responsible for the correctness or completeness of information provided to the Supplier, which is to be directly scrutinized by the Supplier in accordance with good industry practice after receipt. The Supplier is responsible to immediately inform the Customer of any errors, unclarity or issues it discovers in respect of such information.

5.2. The Supplier shall not be relieved from any liability or obligation under the Contract by any review, acceptance, approval, authorisation, acknowledgement, audit, test or inspection or the like, or the witnessing of any of these, by any member of the Customer Group or Client Group. Similarly, the Supplier shall not be relieved by any liability or obligation due to a decision of the Customer or the Client not to witness or perform any of the foregoing matters.

### 6. CHARGES, PAYMENT AND TAX

6.1. The Charges for the Services shall be set out in the Contract, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost, tax and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.2. The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number. Any invoice must be received by the Customer within 30 days following completion of the Services and the Customer will not be under any obligation to process any charges received thereafter.

6.3. In consideration of the completion of the Services by the Supplier, the Customer shall pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

6.4. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, and the Supplier has given notice thereof allowing at least 14 days to rectify, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.4 will accrue each day at 1% a year above the EURIBOR base rate from time to time, but at 1% a year for any period when that base rate is below 0%.

6.5. The Supplier shall for at least sixty (60) months after termination or expiry of the Contract maintain complete and accurate records of all relevant matters in relation to the Services, including but not limited to the time spent and materials used by the Supplier. The Customer and its Client will be allowed to audit and inspect such records, or any other matters related to performance of the Services such as compliance with quality, health, safety and environmental or business ethics requirements, at all reasonable times on request. In this respect they are allowed to enter any Supplier Group offices or premises and to take copies of extracts from the Supplier's books, accounts, records and original documents (including computer and other forms of digital data) relating to the Contract. The Supplier shall obtain equivalent rights of audit from all its subcontractors or vendors of any tier relating to the Contract and shall extend these rights to the Customer and its Client.

6.6. The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability (including any payment obligation) of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause 6.6 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

6.7. The Supplier is fully responsible for any tax, as well as contributions and premiums under any social insurance, national insurance and/or tax legislation, which are owed by any person of the Supplier Group. Taxes include all taxes levied on income and/or profit, as well as wage and sales or value added tax, plus any interest, increases and penalties. The Supplier indemnifies the Customer and Client Groups against any of the aforementioned taxes, premiums and costs. At the Customer's request, the Supplier will immediately provide evidence to



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demonstrate to the Customer's satisfaction that the Supplier Group has fully complied with all of their obligations to pay any amounts for tax, premiums and contributions as referred to in this clause 6.7. If any member of the Customer or Client Groups would be held liable to pay any such amounts, or if the Customer has reason to believe that this could occur (including in the event that the evidence referred to in this clause 6.7 is not provided), the Customer is entitled to deduct this from the Charges or to suspend payment.

### 7. INTELLECTUAL PROPERTY RIGHTS, OWNERSHIP

- 7.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Customer. The Supplier will free of charge provide the Customer with any reasonable assistance as the Customer may require to establish and register such rights. Intellectual Property Rights already owned by the Supplier prior to the Contract remain with the Supplier.
- 7.2. In relation to any Intellectual Property Right that is not transferred to the Customer pursuant to clause 7.1, the Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence as needed to copy, modify and use the Deliverables.
- 7.3. All the Customer Materials, including any modifications or additions to these as may be made by the Supplier, are the exclusive property of the Customer.
- 7.4. The ownership of any Deliverables, including any Deliverables that are not yet fully completed, as well as any materials destined to become part of the Deliverables, will be transferred to the Customer immediately upon the earlier of delivery to the Customer or the payment by the Customer of the relevant instalment. The Supplier will store such items separately and clearly mark any such items as being the property of the Customer, both in its administration and on the items themselves. Regardless of the transfer of title, the risk of loss or damage of the Services and the Customer Materials shall remain with the Supplier as per clause 8.2 (c).
- 7.5. The Supplier will not have, or allow any withholdings, encumbrances or liens (together "Liens") to attach to the Customer Group property (including any Customer Materials) or the Client Group property. The Supplier will at his own expense immediately discharge any such Liens and/or release, indemnify and hold harmless the Customer and Client Groups from any cost of having to discharge such Liens themselves and for any cost or loss arising out of the existence of such Liens.
- 7.6. The Supplier shall allow the Customer full right access to any location including the Supplier's premises to remove and/or take over possession of the Customer Materials and Deliverables, all plans, drawings, specifications, as well as other property of the Customer's and/or Client Groups at any time.

### 8. INDEMNITY

- 8.1. The Supplier shall indemnify the Customer Group against all Claims suffered or incurred by the Customer Group arising out of or in connection with:
  - (a) any claim brought against the Customer Group for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding such claims solely related to the Customer Materials); and
  - (b) any claim made against the Customer Group by a third party arising out of, or in connection with, the supply of the Services; and
  - (c) failure by the Supplier Group to comply with any law, ordinance, regulation, rule or order, or with this Contract. This includes, but is not limited to, fines or penalties by government authorities and Claims arising from the Supplier Group's actual or asserted failure to pay taxes, premiums or custom duties.
- 8.2. The Supplier shall be responsible for and shall at its own expense indemnify, defend and hold harmless the Customer Group and the Client Group from and against all Claims related to:
  - (a) Disease of or injury to or death of any person of the Supplier Group;
  - (b) Damage to or loss of the Supplier Group's property;
  - (c) Damage to or loss or theft of any Deliverables (or materials destined to become part thereof) prior to the delivery to and acceptance thereof by the Customer (including completion of all the Supplier's obligations in respect of shipment), as well as any Customer Materials whilst they are in the care and custody of the Supplier and any property on which the Supplier directly performs the Services;
  - (d) Any wreck or debris removal of the property as stated above in this clause 8.2, or pollution emanating from such property (including any clean-up or containment thereof);and which arises out of or is in connection with the performance of the Contract.
- 8.3. The Customer shall be responsible for and shall at its own expense indemnify, defend and hold harmless the Supplier Group from and against all Claims related to:
  - (a) Disease or injury to or death of any person of the Customer Group and the Client Group;



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- (b) Damage to or loss of the Customer Group's and the Client Group's property, but always excluding any property as set out in clause 8.2 (c); and
- (c) Any wreck or debris removal of the property as stated above in this clause 8.3, or pollution emanating from such property (including any clean-up or containment thereof); and which arises out of or is in connection with the performance of the Contract.

The Customer's indemnity for the Client Group applies only in the event and to the extent of an enforceable indemnity given by the Client under the terms of the main contract between the Customer and the Client.

- 8.4. Save to the extent of liquidated damages, each party waives any claims against the other party and its respective Group for, and shall be responsible for, and shall at its own expense indemnify, defend, and hold harmless the other party and its respective Group for, any special, indirect, incidental or consequential damages as well as for any loss of use, loss of revenue, loss of production or product, loss of profits (indirectly and/or directly), loss of or interruption to business, facilities downtime, loss of use of property or wasted overheads sustained by the indemnifying party or its respective Group in connection with or arising out of this Contract.
- 8.5. In addition, the Customer extends to the Supplier the benefit and protection of any enforceable indemnity for consequential losses given by the Client to the Supplier Group on behalf of the Client Group under the terms of the main contract between the Customer and the Client. The indemnity, defence and hold harmless provided by the Supplier for the benefit of the Customer's Group in clause 8.4 above shall also extend without limitation for the benefit of the Client Group.
- 8.6. The indemnities given by the Customer and the Supplier as contained in clauses 8.2-5 shall apply irrespective of cause and notwithstanding the negligence (in any form) or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

## 9. INSURANCE

- 9.1. During the term of the Contract (including any warranty period), the Supplier shall at its own cost and expense procure and maintain in force, with reputable insurance companies, professional indemnity insurance, equipment insurance, employer liability cover and public liability insurance, and any other insurance that may be required by law or is specified in the Contract or is customary in relation to the Services, to a reasonable level so as to cover the liabilities that may arise under or in connection with the Contract. Such insurances will provide primary cover and comply with any requirements of the Contract as well as good industry practice.
- 9.2. The Supplier shall produce insurance certificates confirming details of cover and compliance with this clause 9, as well as the receipt for the current year's premium in respect of each insurance. The Customer and the Client, and any members of their Groups, will be named as co-assureds under any Supplier insurance policies and such policies will contain a waiver of subrogation on behalf of the Customer and Client Groups.

## 10. INSPECTION, TESTING AND WARRANTY

### Inspection and Testing

- 10.1. The Customer is not held to accept delivery of any Services before it has had reasonable opportunity to satisfy itself that all Contract requirements have been met.
- 10.2. The Supplier shall in any event perform all inspections and tests as described in the Contract and according to good industry practice to verify the Services comply with the Specification and other requirements of the Contract (each of such inspection or test hereinafter called a "Test").
- 10.3. The Supplier shall notify the Customer at least fourteen (14) days prior to the date the Test is to take place, unless the Customer at its discretion accepts a shorter notice period. One or more representatives of the Customer Group have the right to attend the Tests. If the Customer does not attend a Test this shall not result in a waiver of any of the Customer's rights. If the Supplier has proceeded with the Services prior to carrying out a required Test this will be fully at the Supplier's risk and the Customer will be entitled to take all measures at the Supplier's account as are necessary for such Test to still be performed.
- 10.4. In the event that the Services do not pass any or all of the Tests to the Customer's satisfaction the Supplier shall perform the necessary remedial work and repeat the Tests in accordance with the procedure as set out in this clause 10.1 until such time as they have been passed to the Customer's satisfaction.
- 10.5. The Customer may accept passing of a Test subject to a list of outstanding matters, which the Supplier then has to resolve without delay. The Customer may also decide not to require the Supplier to resolve those and apply a reduction of the Contract Price that is proportionate in the Customer's reasonable opinion.
- 10.6. Acceptance under clause 10.1 or the Services passing any Tests shall not:
  - (a) constitute approval by the Customer of the Supplier's performance of its obligations under the Contract or relieve the Supplier from any of its obligations, risks or liabilities;
  - (b) be taken as an admission or evidence that the Services comply with the Contract; or



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- (c) prejudice any rights or remedies of the Customer.

### Warranty

- 10.7. Without prejudice to other rights of the Customer, the Supplier warrants that the Services and Deliverables will conform to all requirements of the Contract (including but not limited to those set out under clause 3.3). Any non-compliance in this respect will constitute a defect.
- 10.8. If any defect occurs, the Customer can notify the Supplier in writing stating the nature of the defect. The Supplier shall without delay provide the Customer with a plan for the remedial work. The Customer may, at its discretion:
- (a) instruct the Supplier to remedy the defect and any damage, including damage to the Deliverables, caused by such defect within a timeframe specified by the Customer; or
  - (b) inform the Supplier that the Customer shall remedy or have remedied the defect and/or damage, and charge the Supplier the costs incurred. In this event any warranty provided by the Supplier pursuant to the Contract shall remain intact.
- 10.9. Any costs associated with the remedial work shall be for the account of the Supplier. Such costs shall include the costs for the performance of all remedial work and any ancillary costs related thereto.
- 10.10. The warranty shall extend for twenty four (24) months from the date when the Services are put into their intended service. For any remedial work a new twenty-four (24) month warranty period will apply after acceptance by the Customer of the completion of such remedial work.

## 11. SUSPENSION AND TERMINATION

### Suspension

- 11.1. The Customer may at any time suspend the performance of all or part of the Services by giving written notice to the Supplier. Upon receipt of a notice of suspension, the Supplier shall, unless otherwise instructed by the Customer:
- a) discontinue the execution of the Contract or part thereof as detailed in the notice, on the date and to the extent specified; and
  - b) properly protect, maintain, store and secure the Work to the satisfaction of the Customer.
- 11.2. The Supplier will upon notice by the Customer resume the Work to the extent specified.
- 11.3. The Supplier will provide the Customer with a motivated overview of the time and cost impact of the suspension and will always make his best endeavours to minimize any such impacts. The Customer and the Supplier shall without delay mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of the suspension. If Customer suspends for Supplier default no cost and/or time relief will however apply and in such an event the Supplier shall be liable for the costs incurred by the Customer in connection with the suspension. In case of suspension due to Force Majeure each party will bear its own costs as set out in clause 13.4.

### Termination

- 11.4. Without limiting or affecting any other right or remedy available to it, Customer may terminate the Contract:
- (a) with immediate effect by giving written notice to the Supplier if:
    - (i) there is a change of Control of the Supplier; or
    - (ii) the Supplier's financial position deteriorates to such an extent that in Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
    - (iii) the Supplier takes any step or actions are taken in connection with it entering into insolvency, administration, receivership, liquidation, settlements of debts or any composition or arrangement with its creditors, applying to court for or obtaining relief or suspension of payment obligations, being wound up (unless for the purpose of a solvent restructuring), having a receiver or administrator appointed to any of its assets, or if similar steps or actions are taken in any jurisdiction; or
    - (iv) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
    - (v) Supplier commits any breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 (five) days after being notified in writing to do so;
    - (vi) the Supplier commits a breach of clause 3.3 (i), clause 14.12 or any Mandatory Policies,
  - (b) for convenience by giving the Supplier written notice.



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### 12. CONSEQUENCES OF TERMINATION

- 12.1. In case of termination pursuant to clause 11.4 (a) the Supplier will be liable for all consequences thereof, including any additional costs for Customer to have the Services performed. Supplier will only be entitled to payment for Services performed to the extent these have been of value to the Customer and Customer will not have to make payment until it has been able to establish the cost to complete the Services and the amount of any other Claim it has against the Supplier arising out of the termination.
- 12.2. In case of termination pursuant to clause 11.4 (b) the Customer will only be held to pay for Services performed plus reasonable direct demonstrable and documented cost arising out of such termination (such amounts never to exceed the level of Charges that would otherwise have been due for the relevant activities).
- 12.3. On termination of the Contract for any reason or expiry, the Supplier shall – unless instructed otherwise by the Customer - immediately deliver to Customer all Deliverables whether then complete, and return all Customer Materials, all plans, drawings, reports, any raw data, specifications and other part of the Services as well as any property of the Customer Group and Client Group. If the Supplier fails to do so, then Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract. At the Customer's request the Supplier will transfer or novate any subcontracts or supply contracts it has entered into to either the Customer or its Client.
- 12.4. Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

### 13. FORCE MAJEURE

- 13.1. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure event, which has been notified in accordance with this clause 13 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against. Each party shall make all reasonable efforts to mitigate the impact of the Force Majeure event.
- 13.2. Only the following occurrences shall be considered Force Majeure:
- (a) war, civil war, armed conflict or terrorist attack, or
  - (b) nuclear, chemical or biological contamination, or
  - (c) national strikes or lock outs or other national industrial disputes except involving solely the workforce of the party so prevented or any of its subcontractor or suppliers, or
  - (d) earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity; or
  - (e) changes to any governmental legislation preventing execution of the Services, or
  - (f) any circumstances for which the Customer or the Client has made a valid claim for force majeure under their main contract (if any).
- 13.3. The party prevented from fulfilling any of its obligations under the Contract due to Force Majeure shall:
- (a) promptly notify and keep the other party informed of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure;
  - (b) use all reasonable endeavours to bring the Force Majeure event to a close or to find a solution in the event of continuation of the Force Majeure event.
  - (c) provided that the Contract has not been terminated before such time, after the cessation of the Force Majeure event promptly notify the other party thereof and provide the other party with all reasonable information concerning the impact of and planned response to the Force Majeure event and promptly resume full performance of its obligations under the Contract.
- 13.4. In the case of Force Majeure each party will bear its own costs from this event. The Customer has the option to terminate at any time during the period of Force Majeure. The Supplier will after 60 days also be entitled to terminate, subject to agreement with the Customer, which will not be unreasonably withheld (it being reasonable to withhold consent if the Customer does not have a corresponding right to terminate under its contract with the Client, if any). In the event of such termination the Customer will only be held to pay for Services performed plus reasonable direct demonstrable and documented cost arising out of such termination (such amounts never to exceed the level of charges that would otherwise have been due for the relevant activities).



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### 14. GENERAL

#### 14.1. Assignment, subcontracting and other dealings

- (a) The Customer may at any time and without the Supplier's consent assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Supplier will provide all required assistance in relation to any of these actions.
- (b) The Supplier shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.
- (c) The Supplier shall be responsible for all work, acts, omissions and defaults of any of its subcontractors as fully as if they were work, acts, omissions or defaults of the Supplier.

#### 14.2. Survivability

Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### 14.3. Language

All communications and documentation will be in the English language and the parties will ensure that all their personnel involved in execution of the Services have a proper command of the English language.

#### 14.4. Confidentiality

- (a) Each party undertakes that it shall not at any time disclose any Confidential Information to any other person, except that each party may disclose any Confidential Information:
  - (i) to any members of its Group or any of its professional advisors who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that any of such persons to whom it discloses Confidential Information comply with this clause 14.4 and will be responsible for any breach committed by such a persons; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - (iii) by the Customer to the Client Group as is in its reasonable opinion required for execution of its obligations towards the Client.
- b) Confidential Information shall remain the exclusive property of the disclosing party, and except as specifically provided otherwise herein, nothing contained in this Contract shall give, or shall be construed as giving the receiving party any right, title, ownership, interest or license or any similar right in or to any Confidential Information. In the event of any disclosure of Confidential Information in breach of the terms of this Contract, the receiving party shall promptly inform the disclosing party what Confidential Information has been disclosed and to which third parties and shall assist the disclosing party in taking all measures reasonably required to limit further disclosure or dissemination of the Confidential Information.
- c) At the written request of the Customer, the Supplier shall immediately return to the Customer all Confidential Information provided to it, as well as all copies thereof, and certify in writing that it has destroyed all Confidential Information, provided that the Supplier may retain documents containing such Confidential Information as required by law or any applicable governmental or regulatory authority. To the extent that Confidential Information cannot be returned or destroyed, the Supplier shall warrant that it shall not make any use of the Confidential Information and shall maintain strict confidentiality thereof.
- d) The parties acknowledges that a breach of the terms of this clause 14.4 may cause irreparable and that damages alone may not be an adequate remedy. The disclosing party may therefore apply for injunctive relief or specific performance for any actual or threatened breach of this clause 14.4.

14.5. **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.6. **Change.** Except as set out in these Conditions, no amendment of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties' authorised representatives.

14.7. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.



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- 14.8. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deemed deleted under this clause 14.8, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.
- 14.9. **Notices**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, and shall be delivered by hand, or by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in Contract.
  - (b) A notice or other communication shall be deemed to have been received: if delivered by hand, at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by email, at the time that the e-mail enters into the information system of the intended recipient (or on the next Business Day if the e-mail enters into such information system after 5 pm or if not delivered on a Business Day) provided that no error message indicating failure to deliver has been received by the sender.
  - (c) This clause 14.9 does not apply to the service of any proceedings or other documents in any legal action. Such service will be done in accordance with the applicable legal requirements.
- 14.10. **Data protection.** The Supplier agrees to process any personal data provided by the Customer solely for the purpose of fulfilling the obligations under the Contract. The Supplier will not process this data for any other purpose without the explicit consent of the Customer. The parties agree that personal data may be collected, stored and processed for the purpose of performing the Contract. Article 6 (1) of the General Data Protection Regulation (EU Regulation 2016/679) serves as the legal basis for the processing of personal data required for the performance of the Contract. The Supplier shall take appropriate technical and organisational measures to ensure the security and confidentiality of the data it processes, taking into account the state of the art, the implementation costs and the nature, scope, circumstances and purposes of processing as well as the likelihood and severity of the risk to the rights and freedoms of natural persons. The Supplier shall retain personal data only for the duration necessary to fulfil the contractual obligations under the Contract. After this period, the Supplier shall securely delete or return the data to the Customer.
- 14.11. **Export Control and Customs**
- (a) The Deliverables or technology involved in the Services covered by this Contract may be subject to export controls requirements. Both parties shall comply with any export regulations and requirements and reasonably assist each other in this respect. The Supplier represents and warrants that it can provide its Services free from any restrictions imposed by such regulations and requirements.
  - (b) The Supplier shall be responsible for complying with all customs regulations relating to its own property as well as in relation to the logistics of any other property that is its obligation under the Contract. The Supplier will provide all reasonable assistance as may be required in respect of (temporary) importation of any Customer Materials where the obligation to import these lies with Customer.
- 14.12. **Business ethics**
- The Supplier hereby represents, warrants and covenants that its activities shall comply with all applicable laws, rules, regulations and policies of all jurisdictions relevant to it and the Services, (collectively "Laws"), including, but not limited to, Laws governing business practices, taxes, export control, data protection, and competition and antitrust.
- 14.13. The Supplier represents to the Customer that it has complied, and will continue to comply, with the Mandatory Policies and relevant anti-corruption and anti-money laundering laws. The Supplier further represents that, in all matters relating to the Contract, it has acted, and will continue to act, in strict compliance with internationally accepted ethical and business integrity standards. The Supplier represents to the Customer that (i) the Supplier has a code of ethics (or functionally equivalent document) and/or an anti-corruption policy (or functionally equivalent document) ("Code") which guides the conduct of its officers and employees, (ii) such Code contains anti-corruption provisions consistent with internationally accepted ethical and business integrity standards, and (iii) such the Supplier maintains internal procedures reasonably designed and conceived to enforce and promote the compliance with the anti-corruption provisions of the Code, which includes, inter alia, training, monitoring, auditing and disciplining provisions.
- 14.14. The Supplier represents to the Customer that it has not and will not offer, promise or give to any employee, officer, agent or representative of the Customer any amount of money, personal services, credit or other thing of value. In no event shall the Supplier be allowed to offer, promise or give to, or request or demand from, the Customer (or any of Customer's any employees, officers, agents or representatives) any payment or thing of value which can potentially impact a business decision of the Customer in the context of the Contract or the subject matter hereof.
- 14.15. **Governing law**
- The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of The Netherlands.



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### 14.16. Jurisdiction

Each party irrevocably agrees that any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation will exclusively be referred to arbitration under the NAI Rules for final resolution, which Rules are deemed to be incorporated by reference into this clause 14.14. The number of arbitrators shall be one. The place of arbitration shall be in Rotterdam, The Netherlands. Notwithstanding the foregoing, the Customer may seek provisional measures from any court of competent jurisdiction (including without limitation provisional injunctive relief), provided that the final resolution of the dispute is through the arbitration tribunal appointed in accordance with this clause 14.14. Whilst any matter or matters are in dispute, the Supplier shall proceed with the execution and completion of the Services and will not suspend or refuse any performance thereof.

#### **Mandatory Policies**

The Mandatory Policies are:

- Corporate and Social Responsibility Policy BMS-CH-0800-PO-024-NL
- Data and Privacy Policy BMS-LH-0800\_PO-003
- Code of Conduct BMS-LH-0800-PO-018

Where any of these documents have been written in relation to the Customer's employees, the Supplier commits to comply with the relevant principles as contained in these documents.