

Terms & Conditions



BETWEEN:
(1) **LLOYD MORGAN GROUP LIMITED** a company registered in England and Wales with number 06243121 whose registered office is at Office 1 & 2 Phoenix House, Hemlock Park, Cannock, WS11 7GA ("LMGL"); and
(2) **THE PERSON** whose details are set out in the Schedule as the Customer ("the Customer").

WHEREAS:

(A) LMGL is a supplier of the Services (defined below).
(B) The Customer wishes to engage LMGL to provide the Services to the Customer subject to and in accordance with this Agreement (defined below).

1. INTERPRETATION

1.1 Definitions.

In this Agreement, the following definitions apply:

Agreement: these terms and conditions (as amended from time to time in accordance with clause 13.9).

Appendices: any appendices referred to in the Schedule and initialled by or on behalf of each of the Customer and LMGL for the purposes of identification.

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

Charges: the charges payable by the Customer to LMGL for the supply of the Services as shown in the Schedule.

Commencement Date: means the date shown as the Commencement Date in the Schedule.

Compliance Monitoring Services: means the compliance monitoring services as set out in the Schedule (if applicable) which may include but without limitation paperwork audits, gate checks and/or any other related auditing services provided from time to time, to be provided by LMGL in accordance with the terms and conditions set out in this Agreement.

Consultancy Services: the relevant consultancy services as set out in the Schedule (if applicable) which may include but without limitation interim staff, or relevant repair staff to be provided by LMGL in a consultancy capacity for the Customer accordance with the terms and conditions set out in this Agreement.

Contract: the contract between LMGL and the Customer for the supply of Services in accordance with this Agreement.

Deliverables: the deliverables (if any) set out in the Schedule which are to be produced by LMGL for the Customer as part of the Services and may include but without limitation relevant reports.

End Date: the date (if any) set out in the Schedule when the provision of the relevant Services are to come to an end, which shall include (without limitation) the final date on which the relevant Services are to be performed (where the Services include a series of Services such as, for example, the provision of multiple audits over a period of time).

Engagement: in relation to the Consultancy Services, the engagement of LMGL by the Customer on the terms and conditions of this Agreement.

Individual: the person or persons set out in the Schedule (who shall be a Personnel).

Intellectual Property Rights: 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.

Location(s): the location or locations set out in the Schedule.

Man Days: in relation to the Consultancy Services, the number of days (if any) specified in the Schedule and each such day shall be a seven hour day unless specified in the Schedule.

Order: the Customer's order for the Services as set out in the Schedule.

Personnel: those of LMGL's employees, agents, sub-contractors and/or authorised representatives (as the case may be) used by LMGL to provide the relevant Services from time to time.

Schedule: the schedule marked as the "*Lloyd Morgan Group Limited – Work & Service Provision Confirmation Schedule*" which covers certain specific information relating to the Contract including but without limitation the details of the Customer, the Commencement Date, the End Date, the Charges, the Services and other relevant terms.

Services: the relevant services to be supplied by LMGL to the Customer as set out in the Schedule which may include one or more of the following services: (a) the Vehicle Inspection Services; (b) Compliance Monitoring Services; (c) Consultancy Services; (d) training services; and (e) any other services from time to time provided by LMGL.

Supplier Materials: has the meaning set out in clause 5.1(g).

Term: the duration of this Agreement.

Vehicle or Vehicles: either the specific vehicles specified in the Schedule or the number of vehicles specified in the Schedule, and in each case includes any body or component part of the said vehicle when separately inspected.

Vehicle Inspection Services: independent vehicle inspection services of the Vehicles as set out in the Schedule (if applicable) and to be provided by LMGL in accordance with the terms and conditions set out in this Agreement.

1.2 In this Agreement, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms or companies;
- (c) save as otherwise provided herein any reference to a section, clause, paragraph or sub-paragraph shall be a reference to a section, clause, paragraph or sub-paragraph (as the case may be) of this Agreement and any reference in a clause or paragraph shall be a reference to the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended;
- (d) reference to this Agreement shall include (save where the context otherwise requires) the Appendices and the Schedule;
- (e) any reference to this Agreement, the Schedules or Annexes shall mean such Agreement, Schedules or Annexes as the same shall have been amended, supplemented or updated from time to time;
- (f) a reference to a party includes its personal representatives, successors or permitted assigns;
- (g) 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;

- (h) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (i) a reference to **writing** or **written** includes faxes and e-mails.

In the case of any inconsistency between any provision of the Schedule or Appendices and any provision of this Agreement, the latter shall prevail.

2. COMMENCEMENT AND TERM

2.1 This Agreement shall be deemed to come into force on the Commencement Date and subject to the provisions contained in this Agreement for prior termination, shall (unless otherwise stated in the Schedule) remain in force until the End Date (if so specified in the Schedule) provided that where no End Date is specified in the Schedule, this Agreement may be terminated by either party serving on the other not less than three months' prior written notice of termination at any time.

2.2 Any samples, drawings, descriptive matter or advertising issued by LMGL, and any descriptions or illustrations contained in LMGL's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.3 The terms and conditions in this Agreement apply to the Contract 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.

2.4 Any quotation given by LMGL shall not constitute an offer.

3. SUPPLY OF SERVICES

3.1 LMGL shall supply the Services to the Customer during the Term:

- (a) in accordance with the terms and conditions of this Agreement; and
- (b) in accordance with LMGL's normal working method and procedures from time to time (including but without limitation the closing procedure at the end of each Visit by the Personnel at the site (where applicable)+;
- (c) at the Location(s); and
- (d) with reasonable care and skill.

3.2 LMGL shall use reasonable endeavours to supply the Services in accordance with the relevant details set out or referred to in the Schedule in all material respects.

3.3 LMGL shall use all reasonable endeavours to meet any performance dates specified in the Schedule, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.4 Where the Contract is for the supply of Vehicle Inspection Services, it is agreed that:-

- (a) the Services shall apply in relation to the Vehicle(s) (if any) only;
- (b) except as expressly set out in the Schedule, only external inspections of the Vehicles are carried out to a standard no higher than DVSA for the purpose of reporting on the general standard of maintenance and roadworthiness of each relevant Vehicle based purely on an visual external examination at the time such Vehicle is presented for inspection;
- (c) subject to the terms of this Agreement, LMGL shall provide a report to the Customer in such manner as LMGL shall in its sole discretion decide;
- (d) the Services shall not in any event extend to the examination of any internal mechanism within any Vehicle;
- (e) the Customer agrees that LMGL reserves the right for its Personnel to refuse to carry out any examination or test of any particular Vehicle if in the sole and absolute discretion of the Personnel it could be dangerous or illegal for such a test or examination to be carried out;
- (f) if any Vehicle is not presented at the time confirmed, LMGL reserves the right in its sole and absolute discretion to charge the agreed Charges for such inspection;
- (g) where set out in the Schedule, each Vehicle will be presented to LMGL as set out above for a number of inspections per year as set out in the Schedule;
- (h) none of the Personnel will be required to drive any of the Vehicles provided that in any event it is the Customer's responsibility to ensure that each such Vehicle is covered by the customer's motor insurance against all relevant risks whilst being driven by or in charge of the Personnel;
- (i) the Customer shall on the days that the Personnel attend the Location(s) to perform the Vehicle Inspection Services:
 - (i) present the Vehicles to the Personnel at the Locations in a timely manner and a clean condition under cover and on a hard level surface; and
 - (ii) ensure that the applicable driver, mechanic or similar responsible person relating to the particular Vehicle shall at all times be available to assist the Personnel performing the Vehicle Inspection Services;
- (j) unless specified in the Schedule, the Vehicle Inspection Services shall not replace any other inspection or tests that the Customer is require to carry out in relation to any Vehicle or otherwise under any applicable laws in force from time to time;
- (k) the Vehicle Inspection Services and any Deliverables are based strictly upon the condition of the Vehicles at the time they are presented to LMGL, and accordingly LMGL shall have no liability to the Customer for any defect or omission in the Vehicle Inspection Services and/or any Deliverable resulting from any change in the condition of the Vehicle at any time following the time of any relevant inspection; and
- (l) LMGL shall use its reasonable endeavours to inform the Customer of any material defects as soon as practicable following performance of the Vehicle Inspection Services.

3.5 Where the Contract is for the supply of Compliance Monitoring Services, it is agreed that:

- (a) the Compliance Monitoring Services shall apply in relation to the Vehicle(s) (if any) and paperwork specified in the Schedule;
- (b) subject to the terms of this Agreement, LMGL shall provide a report to the Customer in such manner as LMGL shall in its sole discretion decide;
- (c) the Compliance Monitoring Services and any related Deliverables are based strictly upon paperwork and materials supplied to LMGL as at the time of performance of the Compliance Monitoring Services, and accordingly LMGL shall have no liability to the Customer for any omissions in the Compliance Monitoring Services and/or any of the Deliverables as a result of the failure of the Customer to provide any relevant information or materials at the relevant time;
- (d) the Customer shall on the days that the Personnel attend the Location(s) to perform the Compliance Monitoring Services:
 - (i) present to the Personnel at the Locations in a timely manner all relevant paperwork
 - Ensure that the applicable personnel and/or relevant audit paperwork shall at all times be available to assist the Personnel performing the Compliance Monitoring Services;
- (e) unless specified in the Schedule, the Compliance Monitoring Services shall not replace any other inspection or tests that the Customer is require to carry out in relation to any Vehicle or otherwise under any applicable laws in force from time to time;

- (f) LMGL shall use its reasonable endeavours to inform the Customer of any material defects as soon as practicable following performance of the Compliance Monitoring Services.
- 3.6 Where the Contract is for the supply of Consultancy Services, it is agreed that:
- (a) the Customer shall engage LMGL and LMGL shall make available to the Customer the Individual to provide the Consultancy Services on the terms of this Agreement;
 - (b) during the Engagement LMGL shall, and (where appropriate) shall procure that the Individual shall provide the Consultancy Services with all due care, skill and ability;
 - (c) unless specified in the Schedule, during the Engagement the Individual shall work under the reasonable and lawful instruction of the Customer and the Customer shall be responsible for setting any work required by the Customer from the Individual;
 - (d) where the Schedule specifies the Consultancy Services are for a specified number of Man Days, the Services shall be performed for the relevant number of Man Days specified. Where the Schedule specifies the Consultancy Services shall be performed until a relevant task is completed, the Consultancy Services shall be performed until the relevant task is completed;
 - (e) if the Individual is unable to provide the Services due to illness or injury, LMGL shall advise the Customer of that fact as soon as reasonably practicable, in which event, the Customer's sole remedy is to elect within 3 Business Days of being notified of such illness or injury to: (a) wait until the Individual is able to provide the Services; or (b) agree that LMGL may appoint a suitably qualified and skilled substitute (approved by the Customer) to perform the Consultancy Services instead of the Individual. In such event, the provision of this Agreement shall apply in relation to the substitute as if the substitute were the Individual;
 - (f) unless it or he has been specifically authorised to do so by the Customer in writing:
 - (i) neither LMGL nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Customer; and
 - (ii) LMGL shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Customer;
 - (g) the Customer shall:
 - (i) ensure and satisfy itself that the terms set out in the Schedule are complete and accurate;
 - (ii) ensure and satisfy itself of the suitability and qualifications of the Individual before the commencement of an Engagement;
 - (iii) without limiting the foregoing, the Customer shall report any dissatisfaction of the Individual (for whatever reason) to LMGL forthwith, in which event LMGL may in its sole and absolute discretion appoint a suitably qualified and skilled substitute (approved by the Customer) to perform the Services instead of the Individual. In such event, the provision of these terms shall apply in relation to the substitute as if the substitute were the Individual.
- 3.7 The Customer agrees:
- (a) that any Deliverables (report produced) are for the sole use of the Customer and not for the use of any third party. The Customer further acknowledges and agrees that such Deliverables will not be relied upon by any third party, and LMGL shall have no liability whatsoever for any loss caused to third parties in reliance upon any report;
 - (b) that any Deliverables provided to the Customer shall not be changed by LMGL after delivery of the Deliverables to the Customer for whatever reason (including but without limitation where new information is provided to LMGL after the Services are performed since the Services are performed based upon the information provided at the time of performance of the Services) unless there is a manifest error on the part of LMGL; and
 - (c) to indemnify and hold harmless LMGL in full and forthwith on demand against any claims, losses, damages, liabilities costs and expenses (including professional costs and VAT thereon) suffered or incurred by LMGL and/or any of the Personnel as a result of:
 - (i) any accidents or damage caused to any person, vehicle, property or otherwise as a result of the employee driving or being in charge of any Vehicles other than where the accident or damage was caused wholly by the negligence of the Personnel; and/or
 - (ii) any breach by the Customer of any of the provisions of this Agreement.
4. **CHANGE TO THE SERVICES, CHANGES TO TIME OF PERFORMANCE AND CANCELLATION**
- 4.1 Any party may request changes in the levels or nature of the Services from time to time by notifying the other in writing of its requirements ("Change Request").
- 4.2 Any Change Request shall only be acceptable if agreed by both parties in writing in which case the parties shall execute a variation to this Agreement as soon as reasonably practicable.
- 4.3 LMGL shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and LMGL shall notify the Customer in any such event.
- 4.4 Notwithstanding any provision of this Agreement to the contrary, LMGL may (in its sole and absolute discretion) charge the Customer the relevant Charges for any Services performed or due to be performed by LMGL prior to the End Date where the Customer:
- (a) cancels the performance of any relevant Services; or
 - (b) wishes to change the date of performance of the relevant Services within 28 days of the due date of performance.
5. **CUSTOMER'S OBLIGATIONS**
- 5.1 Without limiting any obligations of the Customer elsewhere in the Agreement, the Customer shall:
- (a) ensure that the terms of the Order and any information it provides LMGL and/or the Personnel (whether in writing or otherwise) are complete and accurate;
 - (b) co-operate with LMGL in all matters relating to the Services;
 - (c) provide LMGL and the Personnel with access to the Location(s), any of the Customer's premises, office accommodation and other facilities as reasonably required by LMGL and the Personnel to perform the Services;
 - (d) provide LMGL with such information and materials as LMGL may reasonably require and/or request in a timely manner in order to supply the Services so as not to hinder or delay the performance of the Services, and ensure that such information is accurate in all material respects;
 - (e) prepare Location(s) for the supply of the Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (g) keep and maintain all materials, equipment, documents and other property of LMGL ("Supplier Materials") at the Locations in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to LMGL, and not dispose of or use the Supplier Materials other than in accordance with LMGL's written instructions or authorisation;

- (h) provide the Personnel with all reasonably necessary facilities to meet Health and Safety requirements in a working environment and to comply with any legislative requirements;
 - (i) inform LMGL in writing of all health and safety rules and regulations and any other reasonable security requirements that apply at the Location(s);
 - (j) ensure that a duly authorised representative of the Customer is present at the end of each LMGL visit to discuss any findings of LMGL in accordance with LMGL procedures;
 - (k) ensure that if any disputes over the findings of LMGL (as a result of the performance of the Services) are notified to the Personnel at the time of performance of the Services and any Vehicles (where relevant) are not moved in order to allow the dispute to be resolved at the time;
 - (l) notify LMGL of any complaints or any act of dishonesty or default in the performance of the Services by any Personnel immediately once the Customer has knowledge of it or should reasonably have been expected to have such knowledge; and
 - (m) indemnify and hold harmless LMGL from and against all liability, loss, damage, penalties, costs, claims and expenses suffered or incurred by LMGL arising from any death or injury resulting, whether directly or indirectly from the negligence of the Customer, its employees, agents, or licensees or from breach by the Customer of its statutory duty under the Occupiers Liability Act 1957.
- 5.2 If LMGL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- (a) LMGL shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays LMGL's performance of any of its obligations;
 - (b) LMGL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from LMGL's failure or delay to perform any of its obligations as set out in this clause 5.7; and
 - (c) the Customer shall reimburse LMGL on written demand for any costs or losses sustained or incurred by LMGL arising directly or indirectly from the Customer Default.
- 5.3 The Customer shall not directly or indirectly, without the prior written consent of LMGL, at any time from the date of this Agreement to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from LMGL or employ or attempt to employ any person who is, or has been, engaged as an employee, agent, sub-contractor, associate, authorised representative of LMGL in the provision of the Services (including but without limitation any of the Personnel). Any consent given by LMGL in accordance with this clause shall unless otherwise agreed between the parties be subject to the Customer paying to LMGL a sum equivalent to **50%** of the then current annual remuneration of the Personnel or, if higher, **40%** of the annual remuneration to be paid by the Customer to that Personnel.
- 5.4 The Customer shall not discuss matters connected with this Agreement (including but without limitation fees charged by LMGL with any of the Personnel or any of LMGL's employees, sub-contractors, agents or representatives).
6. **CHARGES AND PAYMENT**
- 6.1 The applicable Charges for the Services shall be as set out in the Schedule.
- 6.2 As set out in the Schedule, LMGL shall not be entitled to charge the customer any expenses incurred by LMGL or the Individual unless listed in the schedule or with the prior written approval of the Customer.
- 6.3 Unless otherwise specified in the Schedule, LMGL shall invoice the Customer at the end of each month in relation to the Services performed that month.
- 6.4 The Customer shall pay each invoice submitted by LMGL:
- (a) within the date stated upon the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by LMGL, and
- time for payment shall be of the essence of the Contract.
- 6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by LMGL to the Customer, the Customer shall, on receipt of a valid VAT invoice from LMGL, pay to LMGL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.6 Without limiting any other right or remedy of LMGL, if the Customer fails to make any payment due to LMGL under the Contract by the due date for payment ("Due Date"), LMGL shall have the right to (i) not release any Deliverables, and/or (ii) charge interest on the overdue amount at the rate of 5 per cent per annum above the then current HSBC Bank plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding monthly.
- 6.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against LMGL in order to justify withholding payment of any such amount in whole or in part. LMGL may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by LMGL to the Customer.
7. **INTELLECTUAL PROPERTY RIGHTS**
- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by LMGL.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on LMGL obtaining a written licence from the relevant licensor on such terms as will entitle LMGL to license such rights to the Customer.
- 7.3 All Supplier Materials are the exclusive property of LMGL.
8. **CONFIDENTIALITY**
- A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.
9. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1 Nothing in this Agreement shall limit or exclude LMGL's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or



- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 Subject to clause 9.1:
- (a) LMGL shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) LMGL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £100,000.
- 9.3 Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This clause 9 shall survive termination of the Contract.
- 10. DATA PROTECTION**
- 10.1 Each party shall maintain any notification and registration required under the Data Protection Act 1998.
- 10.2 The Customer acknowledges and agrees that the Customer's details may be submitted to a credit reference agency, and personal data will be processed by and on behalf of LMGL in connection with the provision of the Services.
- 10.3 In Order to provide our services LMG will collect and store information on your Company and employees. This information will be used and stored in accordance to the GDPR regulations. By signing for and engaging LMG services you agree for LMG to store and use your information and where required pass to third parties for the purpose of the service offered. This includes being added to our database and receiving communication on our services. At any point you may opt out by informing us in writing and our database will be amended to show your preferences. LMG GDPR Policies are available upon request.
- 11. TERMINATION**
- 11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 11.2 Without limiting its other rights or remedies, LMGL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, LMGL shall have the right to terminate the Contract by giving the other party one month's written notice.
- 11.4 Without limiting its other rights or remedies, LMGL shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and LMGL if the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(i), or LMGL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to LMGL all of LMGL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, LMGL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then LMGL may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13. GENERAL**
- 13.1 Force Majeure:**
- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of LMGL including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of LMGL or any other party), failure of a utility service or transport 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 suppliers or subcontractors.
- (b) LMGL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents LMGL from providing any of the Services for more than four weeks, LMGL shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 13.2 Assignment and Subcontracting:**
- (a) LMGL may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of LMGL, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.3 Notices:**
- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 13.4 Waiver:**
- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 13.5 Severance:**
- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 13.6 Entire Agreement:**
- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.
- 13.7 No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose nor a relationship of employer and employee. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 13.8 Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 13.9 Variation:** Except as set out in this Agreement, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by LMGL.
- 13.10 Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.