

DATED    MAY 2018

---

TERMS AND CONDITIONS

---

## Annex A

### Work Specification

Cornwall Mining Services Limited trading as Mining Searches UK (“MSUK”, “us”, “our”) shall use reasonable endeavours to provide the Services in accordance in all material respects with the Customer’s instructions in the Purchase Order Form.

#### Specialist Services

- (a) Unless otherwise agreed between the parties, the scope of the Services will be confirmed in writing by MSUK prior to the commencement of the provision of the Services and shall form the “Service Level Agreement” defined below.
- (b) MSUK reserves the right to cease investigations and reassess the estimated price for any Services where investigations reveal features, either natural or man-made, which affect the provision of the Services.
- (c) MSUK will use reasonable endeavours to ensure that excavations are supervised by a suitably qualified employee or appointed representative of MSUK.
- (d) Where site investigation is carried out by means of either machine or hand excavated trial pits/trenches, these excavations will be backfilled prior to leaving the site. Any site investigation involving excavation must be expected to cause some disruption, and following backfilling, settlement of any trial pits/trenches must be expected. MSUK accepts no responsibility for the damage to property or surrounds resulting from the Services. In the event that during our investigations, whether by the use of hand or machine excavation of trial pits or trenches or by the use of probing or borehole methods, a mining feature or other untoward natural or man-made feature is discovered and which, at the time or later as a result of the disturbance of the feature, causes settlement or subsidence, MSUK will not be held responsible. You hereby acknowledge that this is reasonable and accept these terms.

#### Mining Archive Search/Report

MSUK will use reasonable care and skill in preparing a Mining Archive Report. Any Mining Archive Report is provided to the Customer subject to the following:

- (a) MSUK cannot be responsible for the accuracy of any information or data used to compile a Mining Archive Report.
- (b) The Customer recognizes that sources used to compile Mining Archive Reports are historical in nature, may contain inaccuracies and may not be complete. Accordingly, MSUK does not claim that the information used is exhaustive or comprehensive.
- (c) Error in or corruption of information is possible from a number of causes including, but not limited to, inaccuracy or omission in primary or secondary information, inaccurate

processing of information, computer malfunction or corruption of data whilst in the course of conversion, processing by computer or electronic means in the course of transmission by electronic communication link, or printer malfunction. MSUK cannot accept any liability whatsoever arising out of error or corruption of information arising due to circumstances beyond its control.

- (d) Mining Archive Reports are prepared for the benefit of the Customer only and the information in them is confidential. Ownership in any report prepared for the Customer remains with MSUK until the Price has been paid to MSUK. The Customer shall not disclose the contents of the Mining Archive Report to anyone other than their legal advisers without the written consent of MSUK.
- (e) MSUK reserves the right to use any information or material obtained in the course of preparing the Mining Archive Report for any other purpose and without restriction.
- (f) In providing search reports and services MSUK will comply with the Search Code.
- (g) Where MSUK is requested to undertake a Coal Mining Report, MSUK accepts liability for any loss sustained by the owner of the property if any adverse entries relating to coal mining activity are revealed, where MSUK have failed to identify those adverse issues which were present in the data supplied by The Coal Authority. For the avoidance of doubt, MSUK does not accept liability for errors or omissions in the data supplied by The Coal Authority.

#### Contaminated land investigations

- (a) MSUK is not obliged to advise the Customer as to the actual or potential presence of pollution or contamination or as to the risks of such matters having occurred being present or occurring in the future. MSUK shall not have any duty to consider such matters as influencing any aspect of the provision of the Services except where MSUK has specifically agreed, in writing, to provide such advice or consideration.
- (b) Where the scope of the Services includes a site or environmental assessment, audit, review or investigation which includes the interpretation, interpolation or extrapolation of data from discrete sampling locations and/or discrete times, the Customer accepts and agrees that these data may not represent actual conditions between these locations or between these times and that MSUK's conclusions and recommendations based on such data are statements of professional opinion and not statements of fact.
- (c) MSUK's investigations will reveal only information which is available at the time of conducting the investigation. Whilst MSUK will carry out such Services and provide its conclusions and recommendations with reasonable skill, care and diligence, MSUK accepts no liability if the actual conditions between the locations and times is different to MSUK's conclusions or recommendations. **ADDITIONAL CUSTOMER'S OBLIGATIONS**

The Customer shall:

- (a) provide, within a reasonable time, all necessary and appropriate information and assistance as required by MSUK to enable MSUK to provide the Services;
- (b) ensure that any decisions of, or instructions from, the Customer are provided within a reasonable time to ensure that there is no undue delay to the provision of the Services by MSUK;
- (c) decide on the extent of any pollution and contamination investigation that may be necessary and to investigate whether pollution or contamination may affect the provision of the Services or any site to be used by MSUK in providing the Services; and
- (d) provide MSUK with details of any buried services and structures that exist below ground level at any sites where the Services are to be provided.

## **OUT OF SCOPE**

MSUK shall not, as part of the work specification or Service Level Agreement (unless otherwise notified to the Customer in writing):

- survey for hydraulic fracturing
- advise on flood risk
- Mineral Planning Permissions/Mineral Rights
- Archaeological survey
- Ecological survey

MSUK DOES NOT WARRANT THE VERACITY OF ANY INFORMATION PROVIDED BY IT IN RESPECT OF THE SERVICES.

---

DOCUMENTATION AND MATERIALS (AND CONTENTS PROVIDED IN RESPECT OF THE SERVICES ARE THEREIN) ARE FOR INFORMATION PURPOSES ONLY AND RELATE ONLY TO THE PROPERTY.

**The Customer's attention is particularly drawn to the provisions of clause 8.**

### **1. INTERPRETATION**

1.1 **Definitions.** In these Conditions, the following definitions apply:

“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 for the supply of the Services in accordance with clause 5.

“Commencement Date”	has the meaning set out in clause 2.2.
“Conditions”	these terms and conditions as amended from time to time in accordance with clause 12.7.
“Contract”	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
“Customer”	the person or firm who purchases Services from the Supplier and as is identified on the Purchase Order Form.
“Data Protection Legislation”	all applicable privacy and data protection laws including the General Data Protection Legislation ((EU) 2016/679) (GDPR) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2008 (SI 2003/2426).
“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, database rights, rights to use, and protect the confidentiality of, confidential 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.
“Order”	the Customer’s order for Services as set out in the Customer’s Purchase Order Form (in a form as attached to this agreement).
“Property”	The property in relation to which the Services are to be conducted as specified on the Front Sheet.
“Services”	the services, including deliverables, supplied by the Supplier to the Customer as set out in the Service Level Agreement.

“Service Level Agreement” the description or specification of the Services provided in writing by the Supplier to the Customer in accordance with the Work Specification.

“Supplier” Cornwall Mining Services Limited, a limited company registered in the UK with company number 01381067.

“Supplier Materials” has the meaning set out in clause 4.1.7.

“Work Specification” the document attached as Annex A to this agreement.

1.2 **Construction.** In these Conditions, the following rules apply:

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

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

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

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

1.2.5 a reference to **writing** or **written** does not include fax.

2. **BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 The Contract together with the Service Level Agreement and Purchase Order Form (once approved by the Supplier) constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier'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.

2.5 These Conditions and the service description provided by the Supplier 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.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

### **3. SUPPLY OF SERVICES**

3.1 The Supplier shall supply the Services to the Customer in relation to the Property and in accordance with the Service Level Agreement in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in writing between the Customer and Supplier before the Supplier's acceptance of the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier 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 the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

4.1.1 ensure that the terms of the Order and any information it provides subsequently to the Supplier are complete and accurate;

4.1.2 co-operate with the Supplier in all matters relating to the Services;

4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

4.1.5 prepare the Customer's premises for the supply of the Services, including, but not limited to, as indicated to the Customer by the Supplier and/or as outlined in the Service Level Agreement;

- 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- 4.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier'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):

- 4.2.1 the Supplier 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 the Supplier's performance of any of its obligations;
- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

4.3 If you are a business you warrant that you have insurance in place to cover any losses you may suffer in connection with the Services, and/or otherwise in connection with this agreement and that you will make a claim on your insurance in the first instance should you suffer any damage or loss in connection with the Services and/or this agreement.

## 5. **CHARGES AND PAYMENT**

5.1 The Charges for the Services shall be on a time and materials basis:

- 5.1.1 the Charges shall be calculated in accordance with the Supplier's standard hourly fee rates, as set out in the Purchase Order Form;
- 5.1.2 the minimum Charge for visiting the Customer's location (or any location as notified by the Customer to the Supplier) is one hour of the relevant individual(s) charge out rate;
- 5.1.3 the minimum Charge for reporting to the Customer on work conducted by the Supplier is one hour of the relevant individual(s) charge out rate;
- 5.1.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in



connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.2 The Supplier reserves the right to adjust any fee estimate provided to the Customer from time to time.

5.3 The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 6 month period. The Supplier will give the Customer written notice of any such increase four weeks before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within one week of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 5 days written notice to the Customer.

5.4 The Customer shall pay each invoice submitted by the Supplier:

5.4.1 within 21 days of the date of the invoice; and

5.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

5.5 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.

5.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclay's Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

5.8 The Supplier reserves the right to request funds in advance before undertaking any work.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 The Supplier hereby grants to the Customer a non-exclusive licence of Intellectual Property Rights arising out of the Services.

6.3 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 the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

6.4 All Supplier Materials are the exclusive property of the Supplier.

6.5 The Customer may disclose materials arising from the Service to their professional advisers for the purpose as detailed on the Purchase Order Form.

6.6 The Supplier may, acting in its sole discretion, and for a fee to be agreed, grant a licence of such materials to be disclosed to others to be used for other purposes (including, without limitation, any reports).

## 7. DATA PROTECTION

7.1 We will only use your personal information as set out in our Privacy Policy [www.miningsearchesuk.com/privacy-policy](http://www.miningsearchesuk.com/privacy-policy). For the purposes of the General Data Protection Regulation 2016 (or any subsequent legislation), Mining Searches UK is the data controller of any personal information provided to us in relation to search reports.

7.2 **If you are a business**, you warrant that you have the correct permissions in order to pass any personal information about the person ordering the mining search and/or the property owners to us and you will show us such permissions at our request.

7.3 **If you are a consumer**, you have clear rights under current data protection law which allows you to control how we use your personal information. Please see our Privacy Policy for further information on how we use your information in order to provide our mining search services to you.

## 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall run for the duration of the agreement and survive termination of the Contract for a period of 5 years.

## 9. LIMITATION OF LIABILITY

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2 fraud or fraudulent misrepresentation; or

9.1.3 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:

9.2.1 the Supplier 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

9.2.2 If you are a Consumer the Supplier'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 £60,000

9.2.3 If you are a business the Supplier'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 £250,000 and only to cover any shortfall from any insurance payout in accordance with clause 4.3.

9.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

## 10. TERMINATION

10.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

10.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;

10.1.2 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 or limited liability partnership) 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;

10.1.3 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;

10.1.4 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);

10.1.5 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;

10.1.6 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 10.1.2 to clause 10.1.5 (inclusive);

10.1.7 the other party (being an individual) is the subject of a bankruptcy petition or order, 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.

10.2 Without limiting its other rights or remedies, the Supplier 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 and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

10.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.7, or the Supplier 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.

10.4 The Supplier may Terminate this agreement for any reason by giving not less than 30 days written notice to the Customer.

## 11. **CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

11.1.2 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 the Supplier 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;

11.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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

11.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

## 12. **FORCE MAJEURE**

12.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other

industrial disputes (whether involving the workforce of the Supplier 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.

12.2 The Supplier 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.

12.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 13. GENERAL

#### 13.1 Assignment and other dealings.

13.1.1 The Supplier may at any time assign, transfer, mortgage, 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.

13.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

#### 13.2 Notices.

13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier.

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; if sent by pre-paid first class post or other next working day delivery service, at midday on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.3 Severance.

13.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver.** A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in these Conditions, no variation 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 Supplier.

13.8 **Governing law.** 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 the law of England and Wales.

13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**13.10 Independent Dispute Resolution.** If the Customer makes a complaint and MSUK is unable to resolve it to the Customer's satisfaction the Customer may refer the complaint to The Property Ombudsman scheme (web site [www.tpos.co.uk](http://www.tpos.co.uk) , email: [admin@tpos.co.uk](mailto:admin@tpos.co.uk) ). The supplier will co-operate fully with the Ombudsman during an investigation and comply with the Ombudsman's final decision.