



# **STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**

These terms and conditions apply to all Purchase Orders created by Guernsey Electricity Limited (GEL) from 1<sup>st</sup> July 2017 until further notice.

STC-G&S-Rev1

## **1. Definitions.**

In these Conditions, the following definitions apply:

Business Day:	A day (other than a Saturday, Sunday or a public holiday) when banks in Guernsey are open for business.
Commencement Date:	Has the meaning set out in clause 3.2.
Conditions:	These terms and conditions (known as STC-G&S-Rev1) as they may be amended periodically in accordance with clause 15.8.
Contract:	The contract between GEL and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.
Deliverables:	All documents, products and materials of whatever description to be supplied by or on behalf of the Supplier (including those supplied by its agents, contractors and employees) in relation to the Services and in any form or media.
Enactment:	Means any Law, Ordinance, Statutory Instrument, Regulation, any European or United Kingdom legislation which has the force of law within Guernsey, and includes subordinate legislation and/or all codes of practice, directions, recommendations made under them.
Goods:	The goods (or any part of them) set out in the Contract.
Goods Specification:	Either, <ul style="list-style-type: none"><li>• the GEL specification for the Goods; or</li><li>• the Supplier's specification for the Goods which has been accepted by GEL, and which (in either case) is to be the Contract specification for the Goods.</li></ul>
Intellectual Property Rights:	All intellectual property rights of whatever description, whether registered or unregistered, including applications for and renewals or extensions of such rights, in any part of the world and all rights in confidential information.
Order:	GEL purchase order for the supply of Goods and/or Services, which comprises GEL's written acceptance of the Supplier's offer, estimate or quotation.
Services:	The services, including Deliverables, which are to be provided by the Supplier under the Contract and described in the Service Specification

and/or Order.

**Service Specification:** The specification for the Services to be performed by the Supplier accepted by GEL (including any written amendments) and identified in any written specification or described or referred to in the Order.

**GEL:** Guernsey Electricity Limited whose address for service is at Electricity House, PO Box 4, Northside, Vale, Guernsey, GY1 3AD.

**Supplier:** The person from whom GEL purchases the Goods and/or Services whose name and address is set out in the Order.

## **2. Construction.**

In these Conditions, the following rules apply:

- (a) A person includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality).
- (b) References to a party include the personal representatives, successors or assignees of that party.
- (c) References to an Enactment are to that Enactment as it may be amended or re-enacted.
- (d) 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.
- (e) A reference to 'writing' or 'written' includes faxes but not e-mails.

## **3. Basis of contract**

- 3.1 An Order issued by GEL constitutes the acceptance by GEL to purchase Goods and/or Services from the Supplier in accordance with these Conditions and any express terms contained in the Order. In the event of any conflict an express term in the Order takes priority over these Conditions.
- 3.2 The Contract will come into existence on the Commencement Date which is the date on the Order issued to the Supplier. The date for the commencement of the supply of the Services will be the Commencement Date or, if different, the date expressly stated in the Order to be that date.

3.3 These Conditions apply to the Contract to the exclusion of all other terms or conditions that the Supplier seeks to impose or incorporate, whether in its quotation or correspondence or which are implied by trade, custom, practice or by a course of dealing.

3.4 These Conditions apply to the supply of both Goods and Services unless otherwise expressly specified.

#### **4. Supply of Goods**

4.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and the Goods Specification;
- (b) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as if that Act applied in Guernsey);
- (c) be fit for any purpose held out by the Supplier in relation to those Goods and any purpose made known by GEL to the Supplier, expressly or by implication, and that GEL relies on the Supplier's skill and judgment as to fitness for purpose;
- (d) be free from defects in design, materials and workmanship on delivery and remain so for 12 months after delivery;
- (e) comply with all applicable Enactments and regulatory requirements relating to the manufacture, safety, labelling, packaging, storage, handling and delivery of the Goods.

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4.3 GEL shall have the right to inspect and test the Goods at any time before delivery.

4.4 If following inspection or testing GEL reasonably considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, the Supplier shall promptly take all remedial action as is necessary to ensure compliance.

4.5 Notwithstanding any inspection or testing, the Supplier shall remain fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

4.6 GEL shall have the right to conduct further inspections and tests after the Supplier has carried out any remedial action required under Clause 4.4.

#### **5. Delivery of Goods**

5.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to be delivered in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows:
  - (i) the date of the Order,
  - (ii) the Order reference number,
  - (iii) the type and quantity of the Goods (including the code number of the Goods (where applicable)),
  - (iv) any special storage instructions, and
  - (v) if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- (c) if the Supplier requires GEL to return any packaging material for the Goods to the Supplier, that fact must be clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;
- (b) to the delivery address set out in the Order unless otherwise instructed by GEL before delivery (Delivery Location);
- (c) during normal hours of business on a Business Day, unless otherwise instructed by GEL.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.4 If the Supplier delivers less than the quantity of Goods ordered, GEL may reject the Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more than the quantity of Goods ordered, GEL shall not be liable to pay for the excess Goods.

5.5 The Supplier shall not deliver the Goods in instalments without GEL's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced

and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle GEL to any of its remedies contained in these Conditions including those set out in Clause 7.1.

5.6 Title and risk in the Goods shall pass to GEL on completion of delivery.

## **6. Supply of Services**

6.1 The Supplier shall from

- (a) the Commencement Date or
- (b) the date set out in the Order (as the case may be)

and for the duration of this Contract provide the Services to GEL in accordance with the terms of the Contract.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or otherwise notified to the Supplier by GEL prior to the date of the Order.

6.3 In providing the Services, the Supplier shall:

- (a) fully co-operate with GEL in relation to the provision of the Services, and comply with all reasonable instructions of GEL;
- (b) conscientiously perform the Services with all reasonable skill and care in accordance with current best practice in the supply of those Services;
- (c) use suitably skilled and experienced personnel and apply sufficient resources to perform the Services so to ensure full compliance with the Contract obligations including the Service Specification;
- (d) ensure that the Deliverables conform with the Service Specification, and are fit for any purpose expressly or impliedly made known to the Supplier by GEL;
- (e) provide all plant, equipment and other items, (including tools and vehicles) as are required to provide the Services;
- (f) use good quality goods and materials, and ensure that the Deliverables, and all goods and materials supplied and used in the Services, are free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable Enactments and in particular observe all health and safety requirements;

- (h) comply with all security, information technology, fire and other GEL policies or procedures that may apply in the provision of the Services or whilst Suppliers personnel are at GEL premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by GEL to the Supplier (GEL Materials) in safe custody at the Suppliers own risk, maintain GEL Materials in good condition until returned to GEL, and not dispose or use GEL Materials other than in accordance with GEL's written instructions or authorisation.

## **7. GEL remedies**

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, GEL shall, without limiting its other rights or remedies, have one or more of the following rights:

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

7.2 If the Goods are not delivered by the applicable date, GEL may, at its option, claim or deduct 5 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 20 per cent of the total price of the Goods. If GEL exercises its rights under this clause 7.2 it shall not be entitled to any of the remedies set out in clause 7.1 in respect of the Goods' late delivery.

7.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights or remedies, GEL shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by GEL in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by GEL arising from the Supplier's failure to supply Goods in accordance with clause 4.1.

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 GEL's rights under this Contract are in addition to its rights and remedies implied by statute and the customary law.

## **8. GEL's obligations**

GEL shall:

8.1 provide the Supplier with reasonable access at reasonable times to GEL's premises for the purpose of providing the Services;

8.2 provide such information as the Supplier may reasonably request for the provision of the Services and GEL considers reasonably necessary for the purpose of providing the Services.

## **9. Charges and payment**

9.1 The price for the Goods:

(a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by GEL. No extra charges shall be effective unless agreed in writing and signed by GEL.

(c) The charges for the Services shall be set out in the Order, 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 GEL, the charges shall include every

cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 9.2 In respect of Goods, the Supplier shall invoice GEL on or at any time after completion of delivery.
- 9.3 In respect of Services, the Supplier shall invoice GEL on completion of the Services.
- 9.4 Each invoice (whether for Goods or Services) shall include such supporting information required by GEL to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 9.5 In consideration of the supply of Goods and/or Services by the Supplier, GEL 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.
- 9.6 All amounts payable by GEL under the Contract are exclusive of amounts in respect of valued added tax. At the date of these Conditions no value added tax or other goods and services tax (VAT) is chargeable on Goods and Services and the Supplier shall not charge VAT on any supply (no matter where the Goods or Services are supplied from).
- 9.7 In the event that VAT becomes chargeable in Guernsey, and subject to anything to the contrary contained in the relevant Enactment (and any such provision shall prevail over this clause 9.7), the sums stated in the Order are (unless stated otherwise in the Order) deemed to be expressed exclusive of VAT and GEL 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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 9.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow GEL to inspect such records at all reasonable times on request.
- 9.9 GEL may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier on any account against any amount payable by GEL to the Supplier under the Contract.

## **10. Intellectual property rights**

- 10.1 In respect of the Goods and any goods that are transferred to GEL as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to GEL, it will have full and unrestricted rights to sell and transfer all such items to GEL.

- 10.2 Unless expressly agreed otherwise, the Supplier assigns to GEL, free from all third party rights, all Intellectual Property Rights which it holds or owns in relation to or arising from the Services, including the Deliverables.
- 10.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Part IV of The Copyright (Bailiwick of Guernsey) Ordinance, 2005 or any similar provisions of law in any jurisdiction.
- 10.4 The Supplier shall, promptly at GEL's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as GEL may from time to time require for the purpose of securing for GEL the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to GEL in accordance with clause 10.2.

## **11. Indemnity**

- 11.1 The Supplier shall keep GEL indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by GEL as a result of or in connection with:
- (a) any claim made against GEL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - (b) any claim made against GEL by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
  - (c) any claim made against GEL for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services; and
  - (d) any claim made against GEL for actual or alleged breach by the Supplier of the Data Protection (Bailiwick of Guernsey) Laws relevant at the time of said breach.
- 11.2 For the duration of the Contract and for the following period of six years, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on GEL's request, produce both the

insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11.3 This clause 11 shall survive termination of the Contract.

## **12. Confidentiality and Data Protection**

The Schedule applies

12.1 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.

12.2 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.

12.3 The Supplier shall at all times comply fully with the requirements of the relevant Data Protection (Bailiwick of Guernsey) Laws. This includes but is not limited to the secure handling of any personal data obtained by the Supplier and belonging to GEL which must be managed by the Supplier's data processors or data controllers in accordance with any relevant/applicable Data Protection legislation (whether in Guernsey or the United Kingdom). This includes formally notifying GEL as soon as is practicably possible if a breach or loss of personal data belonging to GEL occurs due to the Supplier's actions.

12.4 This clause 12 shall survive termination of the Contract.

## **13. Termination**

13.1 Without limiting its other rights or remedies, GEL may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
- (b) the Supplier 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 is deemed unable to pay its debts or as having no reasonable prospect of so doing;

- (c) the Supplier 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 or is in a state of désastre;
- (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 the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier 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 Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (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 Supplier or a receiver is appointed over the assets of the Supplier or a receiving order made over its real property;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(a) to (j) inclusive;
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (l) the Supplier (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.

13.2 Without limiting its other rights or remedies, GEL may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier 30 days written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, prior to the Delivery of those Goods and in which case GEL shall not be

required to pay the Supplier compensation for the loss of anticipated profits or any consequential loss.

- 13.3 In any of the circumstances in these Conditions in which GEL may terminate the Contract, where both Goods and Services are supplied, GEL may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

#### **14. Consequences of termination**

On termination of the Contract or any part of it for any reason:

- 14.1 where the Services are terminated, the Supplier shall immediately deliver to GEL all Deliverables, whether or not then complete, and return all GEL Materials. If the Supplier fails to do so, then GEL may without limiting its other rights or remedies 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 this Contract;
- 14.2 the accrued rights and remedies of the parties as at 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; and
- 14.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **15. General**

##### **15.1 Force Majeure**

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 12 weeks, GEL shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

##### **15.2 Assignment and subcontracting:**

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of GEL.

- (b) GEL 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.

**15.3 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, sent by fax or sent by prepaid post (using first class where available), recorded delivery or by commercial courier, and in relation to the Supplier at its registered office (if a company) or (in any other case) its principal place of business, and in the case of GEL to the address for service given in Clause 1 and marked for the attention of the Procurement Manager.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid post (using first class if available) or recorded delivery, at 10.00 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 15.3 shall not apply to the service of any proceedings or other documents in any legal action.
- (d) 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.

**15.4 Waiver and cumulative remedies:**

- (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.

**15.5 Severance:**

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract 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.

**15.6 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. No party shall have authority to act as agent for, or to bind, the other party in any way.

**15.7 Third parties:**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

**15.8 Variation:**

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by GEL.

**15.9 Governing law and jurisdiction:**

The 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, Guernsey law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Guernsey.

## SCHEDULE 1 – DATA PROTECTION

### Definitions

1. In this Schedule the following expressions have the following meanings;

“**Appendix**” means the appendix to this Schedule;

“**Authority**” means the Data Protection Authority established under Part IV of the Data Protection Legislation;

“**Contractor Personnel**” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Schedule;

“**Controller**”, “**Data Protection Officer**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**processing**”, “**Processor**” and “**Data Protection Officer**” all have the meanings given to them in the Data Protection Legislation;

“**Data Loss Event**” means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Schedule, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

“**Data Protection Impact Assessment**” means an assessment undertaken by the Controller under section 44 of the Data Protection Legislation;

“**Data Protection Legislation**” means the Data Protection (Guernsey) Law, 2017;

“**Data Subject Access Request**” means a request made by, or on behalf of, a Data Subject under Part III of the Data Protection Legislation;

“**Prior Consultation**” means consultation between the Controller and the Authority under sections 45 or 46 of the Data Protection Legislation;

“**Protective Measures**” means appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; and

“**Sub-processor**” means any third party appointed to process Personal Data on behalf of the Processor related to this Schedule.

### Scope of processing

2. The Parties acknowledge that for the purposes of the Data Protection Legislation and in this Schedule, GEL is the Controller and [ ] is the Processor.

3. The only processing of Personal Data that the Processor is authorised to undertake under the Contract is that which is described in the Appendix, and which it has been instructed in writing to undertake by the Controller.

4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

5. The Processor shall provide all assistance to the Controller as the Controller may reasonably require in the preparation of any Data Protection Impact Assessment or the undertaking of any Prior Consultation in either event prior to commencing any processing.

### **Processor's obligations**

6. The Processor shall, in relation to any Personal Data it processes under the Contract:
- (a) process that Personal Data only in accordance with the Appendix unless required to do otherwise by law in which event it must immediately inform the Controller;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Contractor Personnel do not process Personal Data except in accordance with the Appendix;
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this Schedule;
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Schedule; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by law to retain the Personal Data.

### **Data Subject Access Requests**

7. Subject to clause 8, the Processor shall notify the Controller immediately if it
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);

- (b) receives a request to rectify, block, restrict or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either of the Controller's or the Processor's obligations under the Data Protection Legislation;
- (d) receives any communication from the Authority or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purportedly required by law; or
- (f) becomes aware of a Data Loss Event.

8. The Processor's obligation to notify under clause 7 shall include the provision of further information to the Controller, as details become available.

9. The Processor shall provide the Controller with full assistance in relation to the performance of its obligations under Data Protection Legislation and in relation to any complaint, communication or request made under clause 7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;  
or

(d) assistance as requested by the Controller following any Data Loss Event or the exercise by the Authority of any of its functions.

#### **Keeping of records**

10. The Processor shall maintain sufficient complete and accurate records and information to demonstrate its compliance with this Schedule.

11. On receipt of a written request from the Controller to do so, the Processor shall make all or any of the records under clause 10 above available.

12. The Processor shall allow for and facilitate any lawful inspections or audits of its processing activities whether carried out by the Controller or its designated auditor or by the Authority, or otherwise required under the Data Protection Legislation.

#### **Sub-processing**

13. The Processor may only permit any Sub-processor to process any Personal Data relating to the Contract if it has first:

(a) notified the Controller in writing of the intended Sub-processor and processing;

(b) obtained the Controller's written consent;

- (c) entered into a binding written agreement with the Sub-processor under which the Processor assumes the role of Controller and the Sub-processor of Processor and both then agree to observe the terms of this Schedule as would apply to them in such capacities; and
- (d) provided the Controller with such information regarding the Sub-processor as it may reasonably require.

14. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

**APPENDIX – DATA PROCESSING ACTIVITIES**

<b>Categories of Personal Data</b>	Names, addresses and telephone or email contact details
<b>Categories of Data Subjects</b>	Individuals
<b>Processing activities</b>	Collection, Storage, Retrieval, Use
<b>Purpose of processing activities</b>	To facilitate the performance of the Contract
<b>Duration</b>	Duration of Contract
<b>Location of processing</b>	
<b>Identity of any sub-Processors</b>	