

*The Client's attention is particularly drawn to the provisions of clause 12.*

## 1. Interpretation

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

**Acceptance:** the acceptance or deemed acceptance of the Website by the Client pursuant to clause 8.

**Acceptance Tests:** the tests to be carried out on the Website as set out in clause 8.

**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 Client for the supply of the Services in accordance with clause 5.

**Client:** the person, firm or company who purchases the Services from Orbital.

**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 16.7.

**Contract:** the contract between Orbital and the Client for the supply of the Services in accordance with these Conditions.

**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.

**Orbital:** Orbital Design Limited registered in England and Wales with company number 03836634, being a company specialising in brand development, web and graphic design, digital marketing, photography and related services.

**Orbital Materials:** has the meaning set out in clause 4.1(e).

**Order:** the Client's order for the Services as set out in the Client's written acceptance of Orbital's quotation.

**Services:** the services, including the Online Services, supplied by Orbital to the Client as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by Orbital to the Client.

**Website:** the website to be developed and / or hosted by Orbital on behalf of the Client.

**Works:** any work commissioned by Orbital as part of the Services.

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

- a. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b. a reference to a party includes its personal representatives, successors or permitted assigns;
- c. 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;
- 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; and
- e. a reference to writing or written includes faxes and e-mails.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Client to purchase the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Orbital 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 constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Orbital which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Orbital, and any descriptions or illustrations contained in Orbital'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 apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Orbital shall not constitute an offer, and is only valid for a period of 30 days from its date of issue and based on the information available to Orbital at the time of preparing that quotation.

## 3. Supply of services

- 3.1 Orbital shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2 Orbital shall use its reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Orbital 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 Orbital shall notify the Client in any such event.

## 4. Client's obligations

- 4.1 The Client shall:
  - a. co-operate with Orbital in all matters relating to the Services;
  - b. provide Orbital, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Orbital;
  - c. provide Orbital with such information and materials as Orbital may reasonably require in order to supply the Services, and ensure that such information, including that in the Specification and the Order is complete and accurate in all material respects; (d. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - e. keep and maintain all materials, equipment, documents and other property of Orbital (Orbital Materials) at the Client's premises in safe custody at its own risk, maintain Orbital Materials in good condition until returned to Orbital, and not dispose of or use Orbital Materials other than in accordance with Orbital's written instructions or authorisation; and
  - f. ensure that it sufficiently checks, tests and approves the functionality, designs, custom scripts, content management system, pages and navigation of the Website.



- 4.2 If Orbital's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):
- Orbital shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Orbital's performance of any of its obligations;
  - Orbital shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Orbital's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - the Client shall reimburse Orbital on written demand for any costs or losses sustained or incurred by Orbital arising directly or indirectly from the Client Default.

## 5. Charges and payment

- 5.1 The Charges for the Services shall be either:
- on a time and materials basis, calculated in accordance with Orbital's standard hourly rates, as set out in the quotation; or
  - on a fixed fee basis, as set out in the quotation.
- 5.2 Orbital shall be entitled to charge the Client for any expenses reasonably incurred 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 Orbital for the performance of the Services, and for the cost of any materials. Orbital shall also be entitled to charge the Client for any delivery and courier charges in connection with the Services.
- 5.3 Should the Specification change during the provision of the Services, Orbital reserves the right to increase the Charges. Orbital will endeavour to keep the Client regularly informed about any increases to the Charges. For the avoidance of doubt, any further services carried out on behalf of the Client shall be subject to these Conditions unless otherwise agreed.
- 5.4 Orbital reserves the right to increase its standard hourly rates, provided that such charges cannot be increased more than once in any 12 month period. Orbital will give the Client written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify Orbital in writing within 2 weeks of the date of Orbital's notice and Orbital shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 weeks' written notice to the Client.
- 5.5 Orbital shall invoice the Client either on completion of the Services, at completion of a specific phase of the Services, or monthly, as agreed between the parties. Where a delay of more than 4 weeks has been caused by the Client, Orbital reserves the right to render an invoice for all and any Services (including third party disbursements) provided or performed to date.
- 5.6 The Client shall pay each invoice submitted by Orbital:
- within 30 days of the date of the invoice, unless otherwise agreed; and
  - in full and in cleared funds to a bank account nominated in writing by Orbital, and time for payment shall be of the essence of the Contract.
- 5.7 All amounts payable by the Client 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 Orbital to the Client, the Client shall, on receipt of a valid VAT invoice from Orbital, pay to Orbital 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.
- 5.8 Should the Client dispute the invoice, it must notify Orbital within 7 days of the date of receipt of the invoice(s) in question.

- 5.9 If the Client fails to make any payment due to Orbital under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 8% per cent under the Late Payment of Commercial Debts (Interest) Act 1998. 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 Client shall pay the interest together with the overdue amount.
- 5.10 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or with holding (except for any deduction or withholding required by law). Orbital may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Orbital to the Client.

## 6. Title

- 6.1 The risk in any Works (which are physically capable of being provided) shall pass to the Client on completion of delivery.
- 6.2 Title to the Works shall not pass to the Client until Orbital has received payment in full (in cash or cleared funds) for the Works.
- 6.3 Until title to the Works has passed to the Client, the Client shall:
- hold the Works on a fiduciary basis as Orbital's bailee;
  - store the Works separately from all other goods held by the Client and not remove, deface or obscure any identifying mark or packaging on or relating to the Works, but the Client may use the Works in the ordinary course of its business.
- 6.4 If before title to the Works passes to the Client, if the Client becomes subject to any of the events listed in clause 13.2, or Orbital reasonably believes that any such event is about to happen and notifies the Client accordingly, then, provided that the Works have not been irrevocably incorporated into another product, and without limiting any other right or remedy Orbital may have, Orbital may at any time require the Client to deliver up the Works and, if the Client fails to do so promptly, enter any premises of the Clients or of any third party where the Works are stored in order to recover them.

## 7. Hosting

- 7.1 Orbital will endeavour to ensure that the Website or any online application or hosting services forming part of the Services (Online Services) will function correctly on Orbital's servers at all times however it cannot guarantee that the Online Services will be uninterrupted, error-free, or completely secure. The Client acknowledges that the Online Services may at times be unavailable. The Client understands that there are risks inherent in internet connectivity that could result in the loss of the Client's private and confidential information and property.
- 7.1 Should a defect or problem arise:
- the Client must notify Orbital of the problem and provide such information and assistance as Orbital reasonably requires in connection with the problem; and
  - Orbital will analyse the problem and use its reasonable endeavours to rectify the problem or propose a solution in connection with the same.
- 7.2 Orbital may suspend the Online Services if:
- one of the events in clause 13.2(a) to 13.2(k) occurs;
  - there is an attack on the Client's online system(s) or they are accessed or compromised by a third party without the Client's consent;
  - Orbital is required by law or by a regulatory or government body to suspend such Online Services;
  - the Client fails to keep the Website updated or maintained at all times with the latest suitable security measures; or
  - Orbital reasonably believes that the suspension of the Online Services is necessary to protect Orbital's servers or the security and provision of services to its other clients.



- 7.3 Orbital will give the Client prior notice of a suspension under clause 7.1 of at least 1 Business Day unless Orbital determines in its reasonable opinion that a suspension on shorter or contemporaneous notice is necessary to protect Orbital or its other clients from imminent operational, legal, or security risk. In the event that the Client's online system(s) is compromised, the Client must show evidence to Orbital that it has taken appropriate and sufficient steps to address the vulnerability prior to Orbital putting the Website back in service or, at the Client's request, Orbital may be able to take those steps on behalf of the Client at an additional cost to be agreed.
- 7.4 The obligation of Orbital to provide support services in relation to online hosting will not extend to:
- dealing with lost or corrupted data; or
  - rectifying the Client's online system(s) where these have, subsequent to the provision of the Services, been altered, modified or varied by anyone other than Orbital; or
  - attending to faults arising from the Client's failure to comply with Orbital's instructions with regard to the use of the Online Services or any documentation or manuals provided by Orbital, or any general operator error or omission; or
  - attending to faults attributable to the use or interaction of an ancillary system or software which it is not compatible with the Client's online system(s).
- 7.5 If after initial investigation by Orbital the issue is identified as falling within clause 7.4, Orbital reserves the right to charge its standard hourly rates from time to time for carrying out any necessary remedial work.
- 7.6 The Client acknowledges that if it upgrades or restores the default settings of its online systems at any time during the term of the Services, Orbital will not be liable for any loss of data or other consequences arising from such action.
- 7.7 In the event that the Client exceeds the agreed email storage limit Orbital reserves the right, with written notice to the Client, to request that the Client purchases additional email storage or deletes any excess content.
- 7.8 The Services may be used for lawful purposes only and the Client agrees to indemnify, and hold Orbital harmless from, any claims made by any third party resulting from any deemed mis-use of the Services.

## 8. Website development and acceptance

- 8.1 Once Orbital has completed the design and development of the Website in accordance with the Specification, Orbital shall run the Acceptance Tests. The procedure set out in this clause 8 shall be repeated in respect of each agreed phase of the Services and any further development works agreed by the parties from time to time.
- 8.2 The Acceptance Tests shall test compliance of the Website with the Specification.
- 8.3 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests. Orbital shall notify the Client when the tests have been passed and provide the results of the Acceptance Tests to the Client in writing.
- 8.4 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom Orbital has no responsibility (Non-Orbital Defect), the Website shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Orbital Defect. Orbital shall provide assistance reasonably requested by the Client in remedying any Non-Orbital Defect by supplying additional services or products. The Client shall pay Orbital in full for all such additional services and products at Orbital's then current fees and prices.
- 8.5 Acceptance of the Website shall be deemed to have taken place upon the occurrence of any of the following events:
- the Client submits written confirmation to Orbital of its approval of the Website; or
  - the Client uses any part of the Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
  - the Client unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven Business Days from the date on which Orbital is ready to commence running such Acceptance Tests or retests.

## 9. Warranties

- 9.1 Orbital shall perform the Services with reasonable care and skill.
- 9.2 To the fullest extent permitted by law and save as provided in these Conditions, Orbital makes no warranty or representation (express or implied) of any kind that:
- the Services will meet the Client's requirements;
  - the Online Services will be provided on an uninterrupted, timely, secure or error-free basis;
  - the Online Services will be free from hacking or malicious tampering of any kind by a third party;
  - any results obtained from use of the Services will be accurate, complete or current; or
  - the Services provided will be compatible with the Client's files or software.

## 10. Intellectual property rights

- 10.1 Subject to clause 10.2, all Intellectual Property Rights in or arising out of or in connection with the Services, and all Orbital Materials, shall be owned by Orbital.
- 10.2 The Intellectual Property Rights in the Works shall only pass to the Client when Orbital has received payment for the Services for which those Works form part, in accordance with clause 5.6.
- 10.3 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Orbital obtaining a written licence from the relevant licensor on such terms as will entitle Orbital to license such rights to the Client in its provision of the Services.
- 10.4 Notwithstanding clause 16.6, the Client shall indemnify Orbital for any demands and / or claims in respect of a breach of intellectual property rights made against Orbital where the Client has provided materials (including, but not limited to images, diagrams, logos, videos, data, and other media) to Orbital as part of their instructions to Orbital and the Client shall use their best endeavours to obtain the relevant licenses and permissions for use of those materials.

## 11. Confidentiality

- 11.1 Subject to clause 11.2, 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 11 shall survive termination of the Contract.
- 11.2 Orbital reserves the right to use both initial creative concepts and final approved design work for the purposes of its marketing activities (both online and offline) unless otherwise agreed with the Client. Orbital also reserves the right to back-up and archive data held in its systems and acknowledges that such information shall be subject to the provisions of clause 11.1.



## 12. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Conditions shall limit or exclude Orbital's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - fraud or fraudulent misrepresentation; or
  - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.2 Subject to clause 12.1, Orbital shall under no circumstances whatever be liable to the Client, 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;
  - for any loss suffered by virtue of an error in the Works becoming apparent after the Client has provided its written approval of the Works in accordance with clause 4.1(g) and for the avoidance of doubt, any assistance given by Orbital to rectify any error discovered after the Client has provided such approval shall in no way imply fault on the part of Orbital and shall only be provided on a chargeable basis; or
  - for any loss suffered by the Client where it has commissioned a third party to produce materials or supply services to the Client (whether based on any Works supplied by Orbital or not).
- 12.3 Orbital's total liability to the Client 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 the value of the Services rendered in the preceding 12 months.
- 12.4 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.
- 12.5 This clause 12 shall survive termination of the Contract.

## 13. Termination

- 13.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.
- 13.2 Without limiting its other rights or remedies, Orbital may terminate the Contract with immediate effect by giving the Client written notice if:
- the Client commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
  - the Client 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;
  - the Client 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 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 Client, other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
  - the Client (being an individual) is the subject of a bankruptcy petition or order;
  - a creditor or encumbrancer of the Client 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;

- 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 Client (being a company);
  - a person becomes entitled to appoint a receiver over the assets of Client or a receiver is appointed over the assets of the Client;
  - any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(g) (inclusive);
  - the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - the Client's financial position deteriorates to such an extent that in Orbital's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - the Client (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.
- 13.3 Without limiting its other rights or remedies, Orbital may terminate the Contract with immediate effect by giving written notice to the Client if the Client 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.
- 13.4 Without limiting its other rights or remedies, Orbital may suspend provision of the Services under the Contract or any other contract between the Client and Orbital if the Client becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(k), or Orbital reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.
- 13.5 For the avoidance of doubt, where the Client does fail to pay any amount due under this Contract on the due date for payment, Orbital may refuse to release to the Client any of the Works.

## 14. Consequences of termination

On termination of the Contract for any reason:

- the Client shall immediately pay to Orbital all of Orbital's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Orbital shall submit an invoice, which shall be payable by the Client immediately on receipt;
- the Client shall return all of Orbital Materials which have not been fully paid for. If the Client fails to do so, then Orbital may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 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
- clauses which expressly or by implication survive termination shall continue in full force and effect.



## 15. Force majeure

- 15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Orbital including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Orbital 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.
- 15.2 Orbital shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents Orbital from providing any of the Services for more than 4 weeks, Orbital shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

## 16. General

### 16.1 Assignment and other dealings.

- a. Orbital 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.
- b. The Client shall not, without the prior written consent of Orbital, 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.

### 16.2 Notices.

- a. 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, fax or e-mail.
- b. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.
- c. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 16.3 Severance.

- a. 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.
- b. 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.

16.4 **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.

16.5 **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.

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

16.7 **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 Orbital.

16.8 **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.

16.9 **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).