

Supply of Goods and Services Agreement

Dated:

Maintenance Management Ltd
(MML)

[REDACTED]

(the Supplier)

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Supply of Goods and Services Agreement

Dated [enter date]

Between

- (1) **Maintenance Management Ltd**, a company incorporated in England and Wales with company number 0427414, whose registered office is situated at Apollo House, 6 Bramley Road, Mount Farm, Milton Keynes, MK1 1PT (**MML**).
- (2) [], a company incorporated in England and Wales with company number [insert number], whose registered office is situated at [insert address] (the **Supplier**).

Recitals

- A The Supplier is engaged in business offering the Goods and Services (as defined below) and has considerable skill, knowledge and experience in that field.
- B In reliance upon that skill, knowledge and experience, MML wishes to engage the Supplier to provide the Goods and Services (as defined below) in relation to such matters to Clients of MML, on MML's behalf, and the Supplier agrees to accept the engagement and provide the Goods and Services (as defined below) to Clients of MML, on MML's behalf, on the following terms.
- C The parties are committed to establishing and maintaining the relationship contemplated by this Agreement in a spirit of mutual cooperation so as to achieve fully the parties' objectives with regard to the provision of the Goods and Services (as defined below) to be provided by the Supplier to Clients of MML, on behalf of MML, pursuant to this Agreement.

It is agreed:

1 Definitions and interpretation

- 1.1 The definitions and rules of interpretation below apply in this Agreement.

Affiliate means in relation to a Party any company which is the Subsidiary or Holding Company of that Party or which is a Subsidiary of any such Holding Company from time to time;

Agreement means this Agreement, which consists of these recitals, terms and conditions, the Schedules and the Ancillary Documents and as varied or amended from time to time in accordance with its terms;

Ancillary Documents means any contract or other document entered into pursuant to this Agreement or referred to in it or otherwise incorporated into it;

Authorised Representatives means in relation to each party any person authorised in accordance with this Agreement from time to time to exercise and/or undertake that activity;

AWR means the Agency Workers Regulations 2010;

Business Day means a day, excluding a Saturday or a Sunday, on which banks in London are open for non-automated business;

CAFM means Computer Aided Facilities Management system which is an electronic system for maintaining all maintenance related information and instructions, including the issuing of work order numbers and the collection of time spent on Client Premises;

Change means the addition to, variation of, or removal of any of the Services, any change in the location to which the Services are to be provided, changes in any of the Service Levels or the Service Standards, the Charges or any other aspect of this Agreement which MML or the Supplier may desire to change;

Change Control Procedure means the process of identifying and implementing a Change as set out in Schedule 8

Charges means the charges for the Goods and Services as listed in and calculated in accordance with Schedule 3, and payable by MML to the Supplier in accordance with the provisions of Clause 16 (Charges and payment);

Confidential Information means all proprietary and confidential information of a Party which by its very nature should be treated as confidential and which the Party desires to protect against disclosure or use or which is designated as confidential by a Party, including:

- (a) information relating directly or indirectly to Clients, MML Group's business, including details of trade secrets, know-how, plans, strategies, ideas, operations, compliance information, processes, methodologies and practices;
- (b) information relating directly or indirectly to Clients, the MML Group's customers, suppliers or business partners (or potential customers, suppliers or business partners);
- (c) works of authorship, products and materials written and prepared by or on behalf of Clients or MML in relation to this Agreement including equipment, software, data, diagrams, charts, reports, designs, specifications, inventions and working papers or similar materials of whatever nature and on whatever media; and
- (d) the provisions of this Agreement;

Contract Manager means the person (or that person's deputy) appointed by a Party in accordance with Clause 18 (Contract managers);

Clause means, unless otherwise stated, a clause of this Agreement;

Client means customer of MML for whom the Goods and Services are ultimately provided;

Client Premises means those premises or land upon which Clients if MML conducts their business either directly or through Other Service Providers, whether owned by it or not, and where the Services are to be performed or delivered;

Contract Year means a period of one year commencing on the Effective Date or any anniversary thereof;

Control has the meaning given to that term at section 1124 of the Corporation Tax Act 2010;

Delivery means as set out in Clause 6.3 of this Agreement and **Deliver** shall be construed accordingly;

Delivery Date means the date specified for delivery of the Goods as advised at the time of ordering

Delivery Location means the location specified for delivery of the Goods as advised at the time of ordering

Deliverables means all items created and/or delivered and/or provided and/or arising out of the provision of the Services by or on behalf of the Supplier under this Agreement;

Dispute means any dispute, conflict or disagreement arising out of or in connection with this Agreement;

Dispute Resolution Procedure means the procedure for resolving Disputes in accordance with Clause 46;

DP Regulations has the meaning given to this term in Clause 25.3(a);

Effective Date 5 September 2016

Employment Particulars means the information relating to the Transferring Employees set out in Schedule 9;

Excluded Services means the introduction or supply of any person who is an agency worker as defined in Regulation 3 of the AWR;

Force Majeure Event shall mean any event beyond the reasonable control of the Party seeking to rely on it, and which is unavoidable and which cannot be provided against and shall include, among others, but not be limited to, the following events: epidemics, earthquakes, landslides or displacements of other materials, storms, floods, hurricanes, tempest, acts of God, state or public enemy, wars, revolutions, uprisings, hostilities, civil disturbances, blockades, embargoes, government restraints or similar disruptions or interferences with trade, riots, civil war, insurrection, invasion, explosions and fires. For the avoidance of doubt, strikes, lockouts and shutdowns of a Party or any of its Group (or of any person engaged by any of them) shall not be a force majeure event for that Party;

Good Industry Practice means all relevant practices and professional standards that would be expected of a well-managed expert service provider performing services substantially similar to the Services to customers of the same size and nature as Clients of MML;

Goods means the Goods identified in Schedule 1 and any other goods, including packaging, from time to time supplied or agreed to be supplied to MML or Clients by the Supplier, including those supplied by way of trial or sample;

Group means MML Group or the Supplier Group, as appropriate;

Handover Period means the period during which handover services are supplied as determined in accordance with Clause 27 (Consequences of termination);

Handover Plan means the document detailing the exit strategy agreed by MML and the Supplier as updated and amended in writing from time to time;

Holding Company has the meaning set out in section 1159 of the Companies Act 2006;

Independent Vendor Assessment Body means the independent body appointed by MML to ensure the Suppliers adherence to health and safety legislation and good practice, and to validate a Supplier's suitability to work on behalf of MML;

Insolvency Event means:

- (a) the relevant person proposing a voluntary arrangement within the meaning of section 1 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that person or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;

- (b) the relevant person being deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) the relevant person calling a meeting for the purpose of passing a resolution to wind up, or the passing of such a resolution; or
- (d) the relevant person presenting, or having presented a petition for a winding up order; or
- (e) an application to appoint an administrator being made in respect of the relevant person or a notice of intention to appoint an administrator being filed in respect of the relevant person; or
- (f) any other steps being taken by the relevant person or another person to appoint an administrator over the relevant person; or
- (g) the relevant person having an administrator, administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets; or
- (h) the relevant person stopping or suspending making payments (whether of principal or interest) with respect to all or any classes of its debts or announcing an intention to do so or the relevant person suspending or ceasing or threatening to suspend or cease to carry on its business;
- (i) the amalgamation, reconstruction, reorganisation, dissolution, liquidation, merger or consolidation of the relevant person; and/or
- (j) any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;

Intellectual Property Right or IPR means any right, title or interest in:

- (a) patents, trademarks, trade names, goodwill, registered designs, design rights, semiconductor topography rights, database rights, copyrights and other forms of intellectual or industrial property (in each case in any part of the world, whether or not registered or registrable for their full period of registration with all extensions, renewals and revivals and including all applications for registration or otherwise);
- (b) inventions, formulae, confidential information (including know-how or secret processes);
- (c) rights in computer software and domain names; and/or
- (d) any similar or equivalent rights and assets which may now or in the future subsist anywhere in the world;

Issued Property means any property made available to the Supplier by or on behalf of Clients or MML to be used in the performance of the Services;

Key Performance Indicators means a series of metrics that indicate whether or not the Goods are being delivered and/or the Services are being performed in line with the Agreement

Law means any legislation (primary or secondary), statutory provision, statutory instrument, order, enactment, ordinance, regulation, directive, guidance, code of practice or conduct or other legal or regulatory requirement in any relevant jurisdiction, from time to time which relates to the Services and/or Deliverables, this Agreement or any of the activities to be undertaken by either Party;

MML Group means MML and their respective Affiliates;

New Supplier means any replacement supplier nominated or appointed by MML to provide the Services or any part of the Services;

Other Service Providers means the service providers, contractors or other third parties who are engaged by MML or any member of the MML Group or Clients of MML to provide, operate or otherwise manage services or develop materials;

Party means each of the parties to this Agreement [(excluding the Guarantor)];

Period means a period of one calendar month within the MML financial calendar;

Personal Data has the meaning given to this term by the Data Protection Act 1998;

Pre-existing IPR has the meaning given to this term in Clause 22.1;

Schedule means any schedule to this Agreement;

Appendix means any appendix to this Agreement:

Service Credits means the service credits which may be incurred by the Supplier in accordance with Clause 24 (Monitoring of performance and service credit) and Appendix 3:

Service Levels means the service levels set out in Schedule 4 as may be revised from time to time in accordance with this Agreement;

Services means the services to be performed by the Supplier for Clients on behalf of MML as described in Schedule 2 or as otherwise required under this Agreement as varied from time to time in accordance with this Agreement, including, without limitation the supply of the Deliverables but excluding the Excluded Services;

Service Standards means in relation to the performance of any of the Services, carrying out those Services:

- (a) in a good, safe and professional manner and in a manner free from dishonesty and corruption;
- (b) in accordance with Good Industry Practice;
- (c) in accordance with all relevant provisions of this Agreement, the Service Levels and any rules, codes, policies, procedures and standards notified, as revised from time to time in accordance with this Agreement;
- (d) in co-operation with Clients and MML, and their respective agents, sub-licensees and contractors especially, but without limitation, in relation to the provision of information requested by Clients or MML;
- (e) in a manner which is not and is not likely to become injurious to health or detrimental to the environment or any property at any Client Premises to which the Supplier has access in order to provide the Services; and
- (f) in a manner which shall promote and enhance the public image and reputation of Clients and MML;

Staff means all employees, staff, other workers, agents and consultants of the Supplier who are engaged in the provision of the Services from time to time;

Sub-contractor means those persons, other than the Supplier's employees, who are employed or engaged by the Supplier to carry out partial or total performance of the Agreement in accordance with Clause 32 (Sub-contracting);

Subsidiary has the meaning set out in section 1159 of the Companies Act 2006;

Supplier Group means the Supplier and its Affiliates;

Supplier IPR means any Pre-existing IPR and/or non-bespoke Intellectual Property Rights of the Supplier or its third party suppliers;

Tax Authority means any taxing or other authority competent to impose any liability in respect of taxation or responsible for the administration and/or collection of taxation or enforcement of any Law in relation to taxation;

Term means the term of the Agreement from the Effective Date until expiry or earlier termination (for whatever reason);

Transferee means whichever of MML or any New Supplier replaces the Supplier and becomes responsible for the Transferring Employees by reason of the Transfer Regulations;

Transferring Employees means the persons employed by the Supplier or any member of the Supplier's Group or its Sub-contractor wholly or mainly in respect of the Services immediately prior to Transfer, subject to any Transferring Employee who objects under Regulation 4(7) of the Transfer Regulations;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and as amended from time to time or as replaced by any other legislation or regulation; and

Virus means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes, but is not limited to, self-propagating programming instructions commonly called viruses, Trojans or worms.

Interpretation

- 1.2 Clause headings are for ease of reference only and do not form part of or affect the meaning, interpretation or construction of this Agreement.
- 1.3 References to the singular include the plural (and vice versa), references to one gender include all genders and words denoting persons include individuals, bodies corporate, partnerships, unincorporated associations and other bodies.
- 1.4 The Interpretation Act 1978 shall apply to this Agreement in the same way as it applies to any Law.
- 1.5 Reference to any Law shall be construed to include a reference to that Law as from time to time amended, extended, re-enacted or consolidated and any subordinate legislation made pursuant to that Law.
- 1.6 References to Clauses and Schedules are to clauses of and schedules to this Agreement; references in or in respect of a Schedule to paragraphs are to the paragraphs of that Schedule; and a reference to a clause or paragraph number is, unless otherwise specified, a reference to all its sub-clauses or sub-paragraphs.

- 1.7 In this Agreement the words "other", "includes", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.8 Where such Sub-contractor appointment has been approved by MML in accordance with this Agreement, references to the Supplier shall include any Sub-contractor.
- 1.9 References to time of day are to London time unless otherwise stated.

2 Term

- 2.1 This Agreement shall commence on the [Enter Date] and shall continue in full force and effect for [enter term] until [enter end date] or unless terminated in accordance with this Agreement

3 Supply of Goods and Services

- 3.1 During the Term, the Supplier shall sell and MML shall purchase the Goods and the Supplier shall perform the Services in all respects in accordance with the terms and conditions of this Agreement.
- 3.2 The Supplier shall perform the Services from the Effective Date or otherwise in accordance with this Agreement.
- 3.3 The Supplier shall, and shall ensure that its Staff shall, provide the Goods and Services and otherwise perform this Agreement:
- (a) in accordance with the timescales set out in this Agreement and in all other cases, if not specifically set out elsewhere, promptly;
 - (b) so as to achieve or exceed the Service Levels and Key Performance Indicators;
 - (c) in accordance with the undertakings (including as to the description, quantity, quality, performance, purpose and standards of the Goods), set out in Clauses 3.4, 4 and 5;
 - (d) otherwise in accordance with Good Industry Practice;
 - (e) in a manner which complies with, and enables Clients and the MML Group to comply with, and such that the Goods and Services shall conform to, Laws including Laws relating to the packing, packaging, marking, storage, handling, product safety and delivery of the Goods;
 - (f) in all respects in accordance with this Agreement;
 - (g) in co-ordination and cooperation with Clients and MML, all third party suppliers to Clients and MML and Other Service Providers; and
 - (h) in accordance with any applicable policies which may be requested from MML and which may be amended by Clients or MML (as the case may be) from time to time.
- 3.4 The Supplier warrants, represents and undertakes as follows:
- (a) that this Agreement is binding and enforceable against it in accordance with its terms;
 - (b) it will provide the Goods and Services in accordance with the terms of this Agreement;
 - (c) that it has the necessary authority to enter into this Agreement; and

- (d) that it will have available to it throughout the Term, and will employ in the provision of the Services, all stocks of consumables, equipment, manpower, licences and consents, Intellectual Property Rights and other things required to perform the Services in all respects in accordance with the terms of this Agreement.
- 3.5 Except as otherwise specified in this Agreement, the Supplier will determine and will, without making any additional charge, be responsible for providing all management, accommodation, security employees, hardware, software, data, databases, consents, licences and other materials and resources necessary to provide the Goods and/ or the Services.
- 3.6 The Supplier will allocate suitable personnel with appropriate levels of experience and seniority to provide the Services in accordance with this Agreement.
- 3.7 The Supplier will provide all tools, Personal Protection Equipment (PPE), lifting equipment and associated fall arrest equipment, scaffolding or other equipment required to carry out the Services.
- 3.8 The Supplier will manage the cost to supply all Goods and Services and ensure the maximum spend thresholds set out in Schedule 13 – Ways of Working are not exceeded without the appropriate consent from MML.
- 3.9 The volume of Goods and Services which MML may require the Supplier to provide under this Agreement may vary from time to time and MML does not in any way undertake or represent that the Agreement will generate a specified volume of business or revenue for the Supplier.
- 3.10 The latest version of the Terms and Conditions are available from Maintenance Management's Website (www.maintenance-management.com). The Supplier should ensure they are always conversant with the current Terms and Conditions.
- 3.11 These Terms and Conditions will be the only terms under which MML will instruct a Supplier to supply any Goods and Services, whether the Goods and Services to be supplied are specifically referenced within this or any other document or not, and will apply to all work undertaken by the Supplier on behalf of MML, unless otherwise agreed in writing.
- 3.12 Where acceptance has not previously been communicated to MML, supply of any Goods and Services, whether the supplied Goods and Services are specifically referenced within this or any other document or not, shall constitute acceptance of these Terms and Conditions.

4 Quality and sampling of the Goods

- 4.1 Without prejudice to any other rights MML may have, the Supplier represents, warrants and undertakes to MML that the Goods (and the packing, packaging, marking, storage, handling and delivery of the Goods, where applicable) will at all times:
 - (a) conform as to quantity, quality and description with the particulars stated in this Agreement, and at all times be of satisfactory quality (within the meaning of the Sales of Goods Act 1979);
 - (b) be of sound materials and workmanship;
 - (c) be equal in all respects to the Specification (if any) and any samples or patterns provided by either Party and accepted by the other;
 - (d) be capable of any standard of performance specified in the Agreement;
 - (e) be free from and clear of any and all third party liens, claims, charges, title, interests and other encumbrances;

- (f) comply with all Laws relating to the manufacture and sale of the Goods;
 - (g) comply with all Laws relating to the packing, packaging, marking, storage, handling and delivery of the Goods;
 - (h) be free from defects in design, material and workmanship and remain so for at least 12 months after Delivery or as otherwise provided
 - (i) if the purpose for which the Goods are required is indicated by MML to the Supplier either expressly or by implication, be fit for that purpose.
- 4.2 The Supplier shall obtain all licences, permissions, authorisations, consents and permits needed to supply, and for MML to enjoy, the Goods in accordance with the terms of this Agreement.
- 4.3 The Supplier shall, on request by MML, submit samples of the Goods to MML for its approval before Delivery of the Goods. The Supplier shall mark all samples of the Goods clearly and appropriately for identification. MML shall be entitled to retain all samples until Delivery of the relevant Goods. If on inspection of any samples submitted by the Supplier to MML in accordance with this Clause 4.3, MML is of the reasonable opinion that if the samples were the Goods they would be unlikely to comply with this Agreement then, without prejudice to any other right or remedy that MML may have, it may at its sole discretion require the Supplier to supply a fresh sample on terms specified by MML, at the Supplier's risk and expense within 5 Business Days of being requested to do so or within such shorter time as MML may specify.
- 4.4 If the Supplier fails to promptly supply a fresh sample in accordance with Clause 4.3 to the satisfaction of MML, MML shall be entitled to obtain the Goods from a third party supplier and the Supplier shall reimburse MML for the costs it incurs in doing so, without prejudice to MML's other rights.
- 4.5 The Supplier acknowledges that MML is relying, and that it is reasonable for MML to rely, on the Supplier's skill and judgment as regards fitness for purpose.

5 Inspection of the Goods

- 5.1 MML shall have the right at any time during the Term to enter, and the Supplier shall procure for MML all rights of access to, the Supplier's Premises to:
- (a) inspect the facilities and the equipment used by the Supplier in the manufacture, processing, sourcing and/or storage of the Goods;
 - (b) inspect, take samples of and test the raw materials, the packaging and the Goods; and
 - (c) inspect stock levels of Goods.
- 5.2 Inspections and testing carried out pursuant to Clause 5.1 shall be carried out during Working Hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant MML immediate access to the Supplier's Premises. The Supplier shall provide all such facilities and access (including access to personnel) as may be reasonably required by MML for the purposes of Clause 5.1.
- 5.3 If following an inspection or testing in accordance with Clause 4.3 or Clause 5.1, MML reasonably considers that the Goods are not or are not likely to be as warranted under Clause 4.1 or comply with the terms of this Agreement, MML shall inform the Supplier and the Supplier shall immediately take such action within the time specified by MML, at its sole cost, as is necessary to ensure that the Goods are or will comply with the terms of this Agreement.

MML shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions and shall be entitled to repeat the procedure in this Clause 5 as frequently as it sees fit.

6 Delivery of the Goods

- 6.1 The Supplier shall deliver the Goods to the Delivery Location on the Delivery Date and in accordance with any other instructions set out in Appendices 2 and 3 or as otherwise provided by MML. The Supplier shall not deliver the Goods in advance of the Delivery Date without the prior written consent of MML.
- 6.2 The Goods shall be properly packed and secured in such a manner as to remain in good condition until Delivery under normal conditions of transport having regard to the nature of the Goods and the other circumstances of the case.
- 6.3 Delivery of the Goods (**Delivery**) shall be complete on [the later of] completion of unloading of the Goods at the Delivery Location in accordance with this Clause 6 and any other instructions provided by MML from time to time [or the issue by MML of a certificate of acceptance in accordance with Clause 18].
- 6.4 MML shall not be liable to pay for any goods or items which are delivered in addition to the Goods (an **Excess Delivery** and **Excess Goods**). If the Supplier delivers an Excess Delivery it shall:
- (a) remove that Excess Delivery from Client Premises or MML Premises and shall be liable for any cost which results from or is connected with doing so;
 - (b) be liable to reimburse MML for any loss or damage that MML incurs as a result of that Excess Delivery; and
 - (c) be liable to any other party with a financial interest in that Excess Delivery in order that MML is protected from being liable to any extent.
- 6.5 Clause 6.4 above shall not apply where MML elects to purchase the Excess Goods at a cost which accurately reflects the contractually agreed rate for the Goods. Where such a rate is unavailable, the cost for the Excess Goods shall be the cost agreed between MML and the Supplier. In the absence of such an agreement, Clause 6.4 shall apply in full.
- 6.6 The Supplier shall not deliver Goods by instalments except with the prior written consent of MML and MML shall be entitled to reject any partial delivery which has not been so agreed. If MML does agree to the delivery of Goods by instalments, this Agreement will be treated as a single contract for all instalments.
- 6.7 If the Goods are not delivered, either in whole or in part, on the specified Delivery Date, then without limiting any other right or remedy MML may have, MML may:
- (a) refuse to take any subsequent attempted delivery of the Goods;
 - (b) terminate this Agreement with immediate effect;
 - (c) obtain substitute Goods from another supplier and recover from the Supplier any costs and expenses reasonably incurred by MML in obtaining such substitute goods; and
 - (d) subject to Clause 17 (Limitation of liability, indemnity and insurance) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date,

provided that the Supplier shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by MML's failure to comply with its obligations under this Agreement.

- 6.8 The Supplier shall ensure that the delivery of the Goods shall not adversely affect the operational efficiency of Client operations and shall be responsible for the prompt removal and disposal of all packaging and packing cases used for Goods and materials supplied by the Supplier at its own cost. Delivery shall take place during MML normal business hours unless otherwise specified
- 6.9 The Supplier shall be responsible for and bear the risk in the off-loading of the Goods and each part thereof and shall provide all labour, materials and plant necessary there for at the Supplier's own cost.

7 Title and Risk

- 7.1 All right, title, interest and benefit in and to the Goods supplied to MML and any physical materials supplied to MML in connection with the Goods shall pass to MML on the date upon which the Goods are delivered. Risk in the Goods or such other physical materials prior to Delivery shall be borne by the Supplier.
- 7.2 From the date upon which title to the Goods passes to MML, the Supplier represents, warrants and undertakes that it will store the Goods in an appropriate condition taking into account the nature of the Goods, ensure that the Goods are readily identifiable as belonging to MML and keep the Goods separate from any other goods of a similar nature in the Supplier's possession.
- 7.3 All plant, materials, apparatus and tools used or provided by the Supplier for the installation of the Goods or any part thereof shall at all times be at the sole risk of the Supplier.
- 7.4 In the event that the Supplier removes any Goods or materials with the express permission of MML, the risk relating to those goods remains with the Supplier until and unless the Goods or materials are returned and accepted by MML
- 7.5 Notwithstanding any other right in this Agreement, the Supplier shall not be permitted to acquire a contractual, statutory or common law lien over Goods or property belonging to or in the possession of Clients or MML.

8 Acceptance and defective Goods

- 8.1 Without prejudice to any of its other rights MML may by notice in writing to the Supplier reject any or all of the Goods if the Supplier fails to comply with any of its obligations under this Agreement.
- 8.2 MML shall have the right, in its sole discretion, to conduct acceptance tests of the Goods in accordance with the provisions of Clauses 8.3 to 8.6. The purpose of the acceptance tests shall be for MML (and/or any third party appointed by it) to satisfy itself in its sole discretion that the Goods meet the requirements including any specific acceptance tests and criteria set out therein (the **Criteria**).
- 8.3 When the Supplier is satisfied that the Goods meet the Criteria, it shall deliver to MML, or (with MML consent) give access to MML or any third party appointed by it, a prototype/sample of the Goods for MML review together with evidence that the prototype/sample of the Goods meets the Criteria.
- 8.4 Upon receipt of the prototype/sample of the Goods, MML or such third party as MML may appoint on its behalf will examine the prototype/sample of the Goods and MML shall either:

- (a) notify the Supplier that MML (and such third party as it may appoint on its behalf) considers (in its or their sole discretion) that the prototype/sample of the Goods is acceptable in which event MML shall issue a certificate in writing confirming its acceptance of such Goods, the prototype/sample of the Goods shall be deemed "accepted" and the Supplier shall be authorised to commence supply of the Goods in accordance with terms of this Agreement; or
 - (b) notify the Supplier that the prototype/sample of the Goods is not acceptable.
- 8.5 If MML notifies the Supplier that the prototype/sample of the Goods is not acceptable in accordance with Clause 8.4 the Supplier shall carry out all modifications to the prototype/sample of the Goods necessary to render the prototype/sample acceptable in accordance with Clause 8.4 and redeliver the prototype/sample of the Goods within a reasonable timeframe of MML's notification (and in any event within 14 Business Days) and MML shall review the prototype/sample of the Goods at the cost and expense of the Supplier (a **Repeat Test**).
- 8.6 If, following any Repeat Test under Clause 8.5 the prototype/sample of the Goods still, in MML sole discretion (or in the sole discretion of any third party appointed by it), fails to pass such Repeat Test, MML may elect at its sole option (without prejudice to any other right or remedy available to MML under this Agreement or at law) to:
 - (a) require further remedial work to be conducted by the Supplier and a further Repeat Test or Tests to be carried out by MML in accordance with Clause 8.5 until (in MML's sole discretion or in the sole discretion of any third party appointed by it) the prototype/sample of the Goods is accepted in accordance with Clause 8.4 provided that (for the avoidance of doubt) notwithstanding the provisions of this Clause 8.6 MML shall always in its sole discretion be entitled to exercise its rights under Clauses 8.6(b) to 8.6(d); and/or
 - (b) accept the prototype/sample of the Goods in which event MML and the Supplier shall agree appropriate reductions to any sums set out in Schedule 3 and changes to the Goods; and/or
 - (c) terminate this Agreement in respect of all or any part of the Goods in which event no further monies shall be due or payable by MML in respect thereof and the Supplier shall refund to MML all sums of money paid to the Supplier under this Agreement (whether by way of fees for the manufacture of a prototype or expenses or otherwise paid); and/or
 - (d) claim damages for all other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of this Agreement.
- 8.7 If MML does not wish to carry out acceptance tests pursuant to Clauses 8.3 to 8.6, MML shall not have accepted any Goods until MML has issued a certificate in writing confirming its acceptance of such Goods.
- 8.8 Notwithstanding any prior acceptance, MML shall be entitled to reject any goods that contain a latent defect until a reasonable time after the latent defect has become apparent.
- 8.9 If any Goods delivered to MML do not comply with Clause 4, or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that MML may have, MML may at its sole option reject those Goods and:
 - (a) require the Supplier to repair or remove and replace the rejected Goods at the Supplier's risk and expense within five Business Days of being requested to do so or within such shorter time as MML may specify; or

(b) require the Supplier to compensate MML in an amount equal to the price paid or payable of the rejected Goods in full (whether or not MML has previously required the Supplier to repair or remove and replace the rejected Goods in circumstances where the Supplier has failed to do so to MML's reasonable satisfaction); and

(c) elect that the provisions of any of Clauses 8.6(b) to 8.6(d) apply.

8.10 MML's rights and remedies under this Clause 8 are in addition to its rights under:

(a) the statutory conditions relating to the description, quality, fitness for purpose and correspondence with sample implied into this Agreement by the Sale of Goods Act 1979; and

(b) the statutory conditions relating to the care, skill and timeliness with which services are delivered as implied into this Agreement by the Supply of Goods and Services Act 1982.

8.11 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

8.12 If the Supplier fails to comply with Clause 8.6, or fails to promptly repair or remove and replace rejected Goods in accordance with Clause 8.9, MML may, without affecting its rights under this Clause 8, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall in either case reimburse MML for the costs it incurs in doing so.

9 Delays

9.1 Time for Delivery of the Goods and performance of the Services shall be of the essence.

10 Replacement and Spare Parts

10.1 The Supplier acknowledges that the availability of replacement and spare parts for the Goods is of crucial importance to the value of the Goods and MML's decision to purchase the Goods from the Supplier. The Supplier undertakes that, unless otherwise agreed in writing, it shall supply any spare or replacement parts requested by MML or otherwise required to ensure that the Goods continue to be equal to the Specification and shall ensure that such spare or replacement parts are available in reasonable quantities at reasonable prices and are able to be delivered to MML within a reasonable time.

10.2 Any replacement or spare parts provided by the Supplier under this Agreement, whether as part of the provision of the Goods, shall be new and such replacement parts shall become the property of MML.

10.3 In the event that the Supplier provides replacement or spare parts, it warrants that such spare parts will:

(a) be supplied in accordance with Clause 4.1;

(b) not degrade the standard of the Goods;

(c) not increase the Charges.

11 Supplier Conduct

11.1 The Supplier will comply with the Health & Safety at Work Act 1974, as amended and all other relevant Laws applicable to performance, delivery or receipt of the Goods and/or Services.

- 11.2 The Supplier will notify MML as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Goods or Services.
- 11.3 A Client may refuse entry to or require the removal from a Client's Premises of any member of the Supplier's Staff who does not comply with the requirements of this Clause 11 or who a Client otherwise believes in its sole discretion is unsuitable to be on a Client's Premises.
- 11.4 A Client or MML (as appropriate) will replace any Issued Property as is required, except that the Supplier will be liable for all costs arising out of the misuse or breakage of any Issued Property by any of its employees, agents or employees of its Sub-contractors.
- 11.5 MML grants the Supplier permission to use that part of a Client's Premises as may be from time to time designated for the Services solely for the purposes of delivering the Services.
- 11.6 In granting the permission in Clause 11.5, the Parties understand that no form of lease or relationship of landlord and tenant is created or intending to be created.
- 11.7 The Supplier shall make available to Clients or MML promptly on request any information required by a Client or MML for monitoring compliance by the Supplier with its obligations under any health and safety acts and regulations.
- 11.8 The Supplier must, before the date on which the Services are to start, obtain and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to the provision of the Services.

12 Services Representations and warranties

- 12.1 The Supplier represents, warrants and undertakes in favour of MML and each member of the MML Group that at all times:
- (a) in addition to performing the Services in accordance with Clause 3, it will perform the Services within any timescale specified by MML and in accordance with Good Industry Practice and in all respects in accordance with the Service Standards, the Service Levels, and the provisions of this Agreement;
 - (b) all information, representations and statements communicated (whether in writing or otherwise) to MML by the Supplier or its Staff in connection with or arising out of the:
 - (i) tender process or tender documentation (if any) under which the Supplier was awarded the contract to supply the Services; and/or
 - (ii) subject matter of this Agreementare true, complete and accurate in all respects;
 - (c) it is of sound financial standing and the Supplier and its Staff are not aware of any circumstances which may adversely affect that financial standing in the future;
 - (d) there are no actions, suits or proceedings or regulatory investigations pending or threatened against or affecting the Supplier before any court or administrative body or arbitration tribunal that might affect the Supplier's ability to meet and carry out its obligations under this Agreement;
 - (e) the Supplier will perform its obligations under this Agreement in compliance with all Laws and maintain all consents, licences and approvals required by Law and/or any governmental, regulatory or other authority including health, safety and environmental standards;

- (f) it has full power and authority to enter into this Agreement and to perform the Services, and this Agreement is executed by a duly authorised representative of the Supplier and is binding and enforceable against it in accordance with its terms;
- (g) all hardware, software, materials and facilities used in the course of providing the Services shall be used and maintained and perform in accordance with the relevant manufacturer's or supplier's technical specifications;
- (h) the performance of its obligations under this Agreement, including the provision of the Services and MML use, in accordance with this Agreement, of the Services, Deliverables and any licences granted by the Supplier to MML to use or otherwise deal with any Deliverables and any Intellectual Property Rights therein, shall in no way whatever be a violation or infringement of any third party Intellectual Property Rights and shall not be in any way unlawful or illegal and will not in any way inhibit, restrict or impair the free and/or unrestricted exercise by MML of the rights granted in this Agreement;
- (i) its obligations under this Agreement will be performed by a sufficient number of appropriately qualified, competent, trained and efficient Staff that are lawfully able to work in the UK;
- (j) it has and will continue to have all necessary rights in and to all hardware, software and facilities obtained by the Supplier and used in providing the Services, and such hardware, software and facilities are and will remain free of Viruses;
- (k) the Deliverables shall conform and function in accordance with any technical specifications agreed between the Parties, are of satisfactory quality and fit for purpose;
- (l) at all times, it, its Affiliates and Sub-contractors shall carry out the Services in a manner so as to avoid disruption to Clients of MML and MML's respective businesses;
- (m) it has and will continue to have authority to undertake all the checks referred to in Clause 33.2;
- (n) it does not have and will continue not to have any actual or reasonably perceived conflict of interest with any of MML's personnel, or Clients of MML's personnel, save where notified to and approved in writing by MML in advance of entering into this Agreement.

13 Acceptance and Defective Services

- 13.1 Without prejudice to any of its other rights MML may by notice in writing to the Supplier reject any or all of the Services if the Supplier fails to comply with any of its obligations under this Agreement.
- 13.2 MML shall have the right, in its sole discretion, to conduct acceptance tests of the Services in accordance with the provisions of Clauses 13.3 to 13.6. The purpose of the acceptance tests shall be for MML (and/or any third party appointed by it) to satisfy itself in its sole discretion that the Services meet the requirements of Appendices 2 and 3 including any specific acceptance tests and criteria set out therein (the **Criteria**).
- 13.3 When the Supplier is satisfied that the Services meet the Criteria, it shall deliver to MML, or (with MML consent) give access to MML or any third party appointed by it, a sample of the Services in accordance with the timetable for MML's review together with evidence that the prototype/sample of the Services meets the Criteria.
- 13.4 Upon receipt of the sample of the Services, MML or such third party as MML may appoint on its behalf will examine the sample of the Services and MML shall either:

- (a) notify the Supplier that MML (and such third party as it may appoint on its behalf) considers (in its or their sole discretion) that the sample of the Services is acceptable in which event MML shall issue a certificate in writing confirming its acceptance of such Services and the Services shall be deemed "accepted" and the Supplier shall be authorised to commence supply of the Services in accordance with terms of this Agreement; or
 - (b) notify the Supplier that the sample of the Services is not acceptable.
- 13.5 If MML notifies the Supplier that the sample of the Services is not acceptable in accordance with Clause 13.4(b) the Supplier shall, as part of the scope of this Agreement, carry out all modifications to the sample of the Services necessary to render the sample acceptable in accordance with Clause 13.4(a) and redeliver the sample of the Services within a reasonable timeframe of MML notification and MML shall review the sample of the Services at the cost and expense of the Supplier (a **Repeat Test**).
- 13.6 If, following any Repeat Test under Clause 13.5, the sample of the Services still, in MML sole discretion (or in the sole discretion of any third party benefitting from the Services), fails to pass such Repeat Test, MML may elect at its sole option (without prejudice to any other right or remedy available to MML under this Agreement or at law) to:
- (a) require further remedial work to be conducted by the Supplier and a further Repeat Test or Tests to be carried out by MML in accordance with Clause 13.5 until (in MML's sole discretion or in the sole discretion of any third party appointed by it) the sample of the Services is accepted in accordance with Clause 13.4(a) provided that (for the avoidance of doubt) notwithstanding the provisions of this Clause 13.6(a) MML shall always in its sole discretion be entitled to exercise its rights under Clauses 13.6(b) and/or 13.6(c) and/or
 - (b) accept the sample of the Services in which event MML and the Supplier shall agree appropriate reductions to any sums set out in Schedule 3 and changes to the Services; and/or
 - (c) terminate this Agreement in respect of all or any part of the Services in which event no further monies shall be due or payable by MML in respect thereof and the Supplier shall refund to MML all sums of money paid to the Supplier under this Agreement (whether by way of fees for the Services or otherwise paid); and/or
 - (d) claim damages for all other costs, expenses or losses resulting from the Supplier's supply of Services that are not in conformity with the terms of this Agreement.
- 13.7 If MML does not wish to carry out acceptance tests pursuant to Clauses 13.3 to 13.6, MML shall not have accepted any Services until MML has issued a certificate in writing confirming its acceptance of such Services.
- 13.8 MML's rights and remedies under this Clause 13 are in addition to its rights under the statutory conditions relating to the care, skill and timeliness with which services are delivered as implied into this Agreement by the Supply of Goods and Services Act 1982.

14 Benchmarking

- 14.1 MML may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of Schedule 11.
- 14.2 Subject to Clause 14.3, if any Benchmark Review determines that the Charges do not represent Good Value (as defined in Schedule 11), then the Supplier shall, in accordance with Clause 35 and within three months of completion of the Benchmark Review, make a proposal

for a new solution, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 5.1(c) of Schedule 11, under which there will be a new Initial Term, and modifications may be made to the Services and the Service Levels.

14.3 On receipt of the proposal from the Supplier under Clause 14.1, MML shall have the option to:

- (a) accept the new proposal in which case the parties shall record the change in accordance with Clause 35; or
- (b) reject the proposal and elect to continue to receive the Services on the existing basis; or
- (c) reject the proposal and terminate this agreement on three months' notice in writing to the Supplier without cost other than the Charges up to the date of such termination.

14.4 If the Supplier reasonably believes MML has not complied with the provisions of Schedule 11 in any material respects, or that MML has made a manifest error in determining the results of the Benchmark Review, the Supplier may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

15 Gainshare

15.1 Unless otherwise agreed in writing, no Gainshare agreement exists between the Parties.

16 Charges and payment

16.1 In consideration of the supply of the Goods and the performance by the Supplier of the Services, MML shall pay the Supplier the Charges in accordance with the terms of this Clause, and the terms in Schedule 1 ("The Charges"), unless otherwise agreed in writing and specifically referenced within the attached Schedules.

16.2 Unless otherwise expressly agreed between the Parties in writing, the Charges and such other amounts expressed to be payable by MML under this Agreement shall constitute MML's entire payment liability to the Supplier under this Agreement.

16.3 Unless expressly agreed otherwise by MML in writing:

- (a) the Charges shall be payable by MML to the Supplier in pounds sterling;
- (b) invoices shall be submitted by the Supplier in accordance with Schedule 3 and/or Schedule 13;
- (c) MML shall pay undisputed invoices within thirty (30) days of the end of the month of the date of the invoice or the date upon which the invoice is received, whichever is the latest.

16.4 If MML receives an invoice from the Supplier (either electronically or by other means), all or part of which it disputes in good faith, MML shall notify the Supplier in writing of such dispute as soon as reasonably practicable and MML may withhold payment of such sums as are in dispute pending resolution of such dispute in accordance with the provisions of Clause 46 (Dispute resolution). The Supplier shall provide MML with any further information reasonably requested by MML in connection with any invoice which MML disputes.

16.5 The Supplier will submit invoices for completed services to MML in accordance with the rates and arrangements detailed in Schedule 3.

16.6 All Charges and payments to be made by MML to the Supplier in respect of Goods-and/or Services supplied by the Supplier under this Agreement are stated exclusive of any applicable

VAT, which shall be paid by MML to the Supplier at the rate and in the manner prescribed by Law from time to time subject to prior delivery by the Supplier to MML of a valid VAT invoice in respect thereof.

- 16.7 Without prejudice to any other remedies which may be available to MML, if the Supplier fails to supply the Goods or perform the Services (or any part thereof) in accordance with this Agreement, MML shall have the right to suspend payment of such of the Charges as it considers (acting reasonably) are allocable to such Goods and/or Services (**Relevant Charges**), until the Goods and/or Services have been supplied, after which payment of the Relevant Charges so suspended shall (subject to any other rights of MML to suspend or withhold payment) be payable to the Supplier promptly.
- 16.8 Any overpayments by MML or payments for Goods or Services not provided by the Supplier shall represent a sum of money recoverable from the Supplier.
- 16.9 The Supplier will submit all invoices to MML within ninety (90) days from completion of the Services or delivery of the Goods. Invoices submitted after this time will not be paid.

17 Limitation of liability, indemnity and insurance

- 17.1 The Parties' liability in any single Contract Year in connection with this Agreement will be limited as follows:
- (a) unless Clauses 17.2, 17.4 or 17.6 apply, the Supplier's liability to MML (including another member of the MML Group) arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited in each Contract Year to the greater of 200% of the Charges paid or payable in that Contract Year and £10,000,000 (ten million pounds sterling); and
 - (b) unless Clause 17.2 applies the liability of MML (including another member of the MML Group) to the Supplier (including another member of the Supplier's Group) arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited to losses which shall not exceed in each Contract Year the lesser of 100% Charges paid or payable to the Supplier in that Contract Year and £1,000,000 (one million pounds sterling).
- 17.2 Subject to Clause 17.3 below, neither party will be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.
- 17.3 Nothing in this Agreement excludes or limits the liability of either Party in respect of:
- (a) death or personal injury caused by its negligence (including negligence of its employees, agents or contractors);
 - (b) fraud and/or fraudulent misrepresentation;
 - (c) any indemnity given in this Agreement;
 - (d) liability which may not otherwise be limited or excluded under applicable law; or
 - (e) in the case of the Supplier:
 - (i) loss of or damage to physical property; or
 - (ii) any liability of the Supplier pursuant to Clause 332.

- 17.4 If any payment to MML under an indemnity in this Agreement is subject to deduction or withholding for or on account of taxation or if MML is subject to taxation on such payment, the Supplier shall pay an additional amount to MML as will ensure that MML shall receive, after the deduction, withholding or taxation, the same amount it would have received in the absence of the deduction, withholding or taxation.
- 17.5 The Supplier shall on demand indemnify and keep indemnified, defend and hold harmless MML and each member of MML Group and their respective directors, officers, agents, employees, successors and assigns from any and all losses, including all claims, expenses, damages, proceedings, liabilities, and costs, arising from or in connection with:
- (a) any claim relating to death or personal injury arising from the negligent acts or omissions of the Supplier;
 - (b) any claim or cost arising from any breach of contract by or negligence of the Supplier and from all consequences of negligence or any other tort;
 - (c) the wilful abandonment by the Supplier of its obligations under this Agreement;
 - (d) the wilful misconduct of the Supplier;
 - (e) any fraudulent, dishonest or illegal act or omission by the Supplier;
 - (f) any breach by the Supplier of its obligations under this Agreement in relation to MML's Confidential Information;
 - (g) the breach by the Supplier of any Law or any breach of the obligations of the Supplier which causes or contributes to any breach of Law by any member of the MML Group; and
 - (h) any breach of any of the representations, warranties and undertakings contained in Clause 12.

and in paragraphs (a) to (h) in this Clause 17.5, references to the Supplier include its agents, contractors and Sub-contractors, together with all members of the Supplier Group.

17.6 Insurance and Notice of Incidents

17.6.1 Without prejudice to MML's other rights under this Agreement, the Supplier shall, throughout the Term, take out and maintain with reputable insurers such policies of insurance as may be necessary in accordance with Good Industry Practice to insure the Supplier against all manner of risks that might arise out of the acts or omissions of the Supplier or otherwise in connection with the Supplier's performance of its obligations under this Agreement, including in respect of the following risks:

- (a) Employer's liability – not less than £10,000,000 (ten million pounds sterling)] cover in respect of any one incident;
- (b) public liability – not less than £10,000,000 (ten million pounds sterling) cover in respect of any one incident;
- (c) loss or destruction of property - not less than £10,000,000 (ten million pounds sterling) cover in respect of any one incident;
- (d) professional negligence – not less than £5,000,000 (five million pounds sterling) cover in respect of any one incident;

- (e) product liability - not less than £10,000,000 (ten million pounds sterling) cover in respect of any one incident and
 - (f) such other risks in such amounts as may from time to time be reasonably required by MML.
- 17.6.2 The Supplier's insurance policies effecting the cover referred to in Clause 17.6.1 (**Cover**) shall include a general interests clause and in the event of any loss to which such policies relate, the Supplier shall notify the relevant insurer of MML's interest as required by the relevant policy.
- 17.6.3 The Supplier shall, on the date of this Agreement and as requested after that date, submit to MML's appointed Independent Vendor Assessment body accurate details of its insurance cover, together with documentary evidence that such insurance remains properly maintained. The Supplier shall:
- (a) not by its acts or omissions cause any insurance cover or policy to become void or voidable; and
 - (b) immediately notify MML in writing of any cancellation notice received from any insurer or of any material change in cover type or amount.
- 17.6.4 If the Supplier fails to comply with its obligations under this Clause 17.6, either fully or at all, MML shall be entitled itself to provide insurance in place of the Supplier and to charge the cost of that alternative insurance, together with an administration charge of ten per cent (10%) of the cost, to the Supplier (in MML's discretion), either by way of deduction from any amounts payable by MML to the Supplier under this Agreement, or by recovering the same as a debt due to MML from the Supplier.
- 17.6.5 The Supplier shall notify MML in writing of:
- (a) any employer's liability or public liability incident which relates in any way to this Agreement with a potential to exceed £25,000 (twenty-five thousand pounds sterling) (excluding costs), within five (5) days of such incident occurring; and
 - (b) any cases of precedent or reputational risk, stress, harassment, disease (including vibration white finger or repetitive strain injury) or needle stick, which relate in any way to this Agreement as soon as practicable after discovery.
- 17.6.6 The Supplier shall keep MML informed and up-to-date on the progress of any incident referred to in Clause 17.6.5 (Notice of incidents) and related claims, decisions taken in respect of liability and any movement of reserves with respect thereto.
- 17.6.7 The Supplier shall promptly, and in any event within twenty-eight (28) days of the occurrence concerned, notify MML in writing and keep MML informed and up-to-date on any disputes, claims, litigation, mediation or arbitration whether threatened or pending in relation to any incident involving the Supplier or other Party's provision of the Goods or Services (**Supplier Dispute**), so far as it is legally permissible to do so.
- 17.6.8 Subject to MML rights under Clause 17.6.10, the MML shall be entitled to take all reasonable steps to deal with any Supplier Dispute so as to mitigate the extent of the losses of and/or damage to MML's reputation and any disruption to its business.
- 17.6.9 To the extent permitted by Law, MML shall have the right, at its sole option, to contribute opinion and have such opinion taken into account in the Supplier's handling of any Supplier Dispute.
- 17.6.10 Where any Supplier Dispute, in MML's reasonable opinion, impacts (whether directly or indirectly) on MML's reputation, or that of a Client, MML shall have the right:

- (a) to apply to be joined in such action; and/or
- (b) to take over the conduct of such Supplier Dispute

provided always that MML exercises such right(s) within a reasonable period of being notified of the Supplier Dispute or of becoming aware that such dispute impacts MML reputation or that of a Client.

- 17.6.11 Where MML exercises any right pursuant to Clause 17.6.10(b), the Supplier shall make available to MML all papers and documentation relating to the Supplier Dispute and at MML's request, afford MML and/or its advisers all reasonable assistance at MML cost.
- 17.6.12 If, in any case, MML takes over conduct of a Supplier Dispute (except where in MML's reasonable opinion, the Supplier Dispute is not being handled satisfactorily), MML shall, when it takes over conduct, become responsible for the associated future legal costs of both Parties provided, in respect of the Supplier's legal costs, such costs are reasonable.
- 17.6.13 Nothing in this Clause 17.6 shall oblige the Supplier to breach any condition imposed by its insurers from time to time, provided that the Supplier shall take all commercially reasonable steps to seek such third party consents as may be required to allow MML to become involved in a Supplier Dispute as provided in Clause 17.6.10.

18 Contract Managers and Key Positions

- 18.1 The Parties will implement, follow and abide by contract management procedures set out in Schedule 7.
- 18.2 Where applicable, each Party shall ensure that its Contract Manager, and in the case of the Supplier, all or any of its Staff, and any other positions identified by either Party in writing from time to time are designated as the holders of key positions (**Key Positions**) and shall supply the Services in accordance with the terms of this Agreement.
- 18.3 During the Term (and any Handover Period):
 - (a) the Supplier shall use reasonable endeavours to ensure that any person appointed to a Key Position performs that role continuously for a period of not less than 12 months after his appointment;
 - (b) the Supplier shall implement processes to transfer knowledge of Client's and MML's requirements to its Staff both initially and as new people are engaged.
- 18.4 Where any person appointed by the Supplier to a Key Position ceases to provide the Services no new appointee shall be appointed to that Key Position by the Supplier unless and until that new appointee has been approved by MML.
- 18.5 Where any person appointed to a Key Position ceases to provide the Services, the Party who appointed that person shall if requested by the other Party, where practical, and at its own cost ensure that the replacement person spends at least one week working with the person ceasing in the position to ensure that knowledge concerning the Services and MML's requirements are not lost.

19 Issued property

Any of the Supplier's property brought onto a Client's Premises will be, and will remain at the risk of the Supplier. Any Issued Property will be at the Supplier's risk whilst in the Supplier's possession and the Supplier shall on demand fully and effectively indemnify a Client and MML

against any and all loss or damage to the Issued Property whilst it is in the Supplier's possession and/or control.

20 Confidentiality

- 20.1 The Parties acknowledge and agree that this Agreement between MML and the Supplier is and shall remain confidential at all times. Any specifications, patterns, drawings, samples, artwork, materials, documents, software, data and information (and any associated Intellectual Property Rights) issued by or on behalf of MML are confidential and come within the meaning of Issued Property. Their use and the use of any associated Intellectual Property Rights by or on behalf of the Supplier must be solely for performing the Supplier's obligations under the Agreement and used in accordance with the licence granted under Clause 22.7. The Supplier acknowledges and agrees that such material must not be copied, used or disclosed to any third party without the prior written consent of MML.
- 20.2 The Parties shall:
- (a) keep the Confidential Information confidential and not disclose the same or any part thereof to any third party, without the other Party's prior written consent, save that a Party may only disclose such Confidential Information to its Group, its officers, directors, and employees engaged in the provision of the Services (subject, in the case of the Supplier, to the provisions of sub-Clause 20.3) and the Other Service Providers in connection with the performance of this Agreement; and
 - (b) not use or copy the Confidential Information or any part thereof except for the proper performance of their responsibilities under the Agreement.
- 20.3 The Supplier warrants that all officers, directors, employees, professional advisers, agents, consultants, contractors and Sub-contractors engaged in the provision of the Goods and Services or performing the Supplier's obligations under the Agreement are bound to the Supplier through their individual contracts of employment (or as applicable, terms of engagement or sub-contracts) in respect of keeping confidential and not using the same for any purpose other than the provision of the Services all Confidential Information obtained from or disclosed by or on behalf of the Supplier's clients, including Confidential Information obtained from or disclosed by or on behalf of Clients or MML or the Other Service Providers. Where MML requires, the Supplier confirms that all officers, directors, employees, professional advisers, agents, consultants, contractors and Sub-contractors engaged in the provision of the Goods and Services or performing the Supplier's obligations under the Agreement will enter into a confidentiality agreement with MML in respect of the information that is confidential on terms no less onerous than those contained in this Clause 20. The Supplier will, at its own cost, following a request from MML take such action as is necessary to enforce these confidentiality obligations against any such officers, directors, employees, professional advisers, agents, consultants, contractors and Sub-contractors to whom this clause applies.
- 20.4 Subject to the other provisions of this Agreement, the Supplier will not remove all or any part of the Confidential Information (including the Issued Property) from a Client's Premises or such premises as may be notified by MML from time to time, without MML's prior written consent (which may be given on such terms as MML considers appropriate) and except in accordance with this Agreement.
- 20.5 Upon expiry or termination of the Agreement, the Supplier shall at its own cost at the option of MML either return or permanently destroy all copies of any material containing Confidential Information belonging or relating to MML (in machine readable form or otherwise) and shall produce a signed undertaking confirming that it has not retained copies of any such materials.

- 20.6 The provisions of Clause 20.2 above shall not apply to:
- (a) any information in the public domain or which becomes so at a future date otherwise than as a result of breach of any confidentiality obligation; or
 - (b) information which was already in the possession of the recipient, otherwise than as a result of a breach of any confidentiality obligation; or
 - (c) information obtained from a third party who is free to divulge the same; or
 - (d) any information which is required to be used or disclosed by Law.
- 20.7 On expiry or termination of the Agreement or on request by MML, the items referred to in Clause 20.1 and any records or copies of the same in whatever form, must be returned by the Supplier to MML or destroyed on MML's instruction.
- 20.8 The Supplier shall fully and effectively indemnify and keep MML and/or its Clients indemnified on demand, against any and all losses, damages, liabilities, costs and expenses MML and/or its Clients may suffer or incur as a result of or in connection with any breach by the Supplier or its officers, directors, employees, professional advisers, agents, consultants, contractors and Sub-contractors of this Clause 20.
- 20.9 The Supplier agrees that damages may not be an adequate remedy for any breach of this Clause 20 by the Supplier or any other person authorised to receive Confidential Information obtained from or disclosed by or on behalf of Clients or MML or any Other Service Providers pursuant to this Clause 20, and MML shall be entitled to seek any legal and/or equitable relief, including an injunction, in the event of any breach of the provisions of this Clause 20 in addition to its other remedies at Law, in equity and under this Agreement.
- 20.10 If a party is required to make a disclosure of Confidential Information as contemplated by Clause 20.6(d) above, it shall only disclose the minimum Confidential Information required and shall where possible, consult with the other party's Contract Manager prior to any such disclosure.

21 Public statements

Except with the prior written consent of MML, the Supplier shall not make any public statement about this Agreement or any information relating to it. The Supplier shall ensure the Staff of the Supplier Group are aware of and comply with the provisions of this Clause.

22 Intellectual property rights

- 22.1 This Agreement does not assign any Intellectual Property Rights existing at or prior to the Effective Date (**Pre-existing IPR**). Neither Party may assert ownership of the other Party's Pre-existing IPR.
- 22.2 As between MML and the Supplier, MML retains all property rights, including all Intellectual Property Rights, in and relating to the Goods and Services and any patterns, drawings, samples, artwork, materials, data and information and any Confidential Information of or relating to MML (together **MML IP**) issued or made available to the Supplier.
- 22.3 Where the Goods are designed, created or otherwise developed by or for MML pursuant to this Agreement, then all Intellectual Property Rights shall belong to MML absolutely. The Supplier hereby assigns with full title guarantee by way of present assignment, all right, title and interest, both legal and beneficial in and relating to such Intellectual Property Rights to MML with the intent that upon the making or creation thereof, such Intellectual Property Rights shall automatically vest in MML.

- 22.4 Other than as expressly provided in Clause 22.6, all Intellectual Property Rights in and relating to all Deliverables shall be assigned to and vest in MML absolutely as and when such items come into existence. The Supplier hereby assigns (and shall procure the assignment) to MML with full title guarantee and free from all encumbrances and third party rights by way of present assignment, all right, title and interest, whether legal or beneficial in and relating to all Deliverables (whenever created), and all present and future Intellectual Property Rights in the Deliverables throughout the world absolutely and for the full duration thereof, including all extensions and renewals. The Supplier shall do such things and will procure that any Sub-contractor assigns and does such things as MML may consider are necessary to give effect to this Clause. For the avoidance of doubt, following assignment in accordance with this Clause 22.4 the Deliverables shall become part of the MML IP.
- 22.5 The Supplier shall ensure and undertakes to procure that all moral rights in the Deliverables are waived unconditionally and irrevocably and are not asserted.
- 22.6 The Supplier hereby grants (and shall procure the grant) to a Client and MML a royalty free, irrevocable, worldwide, perpetual, non-exclusive, sub-licensable, transferable right and licence, free of charge, to use, copy, adapt, exploit and otherwise deal with any or all such Supplier IPR and those of its third party suppliers in order to enable a Client and MML to receive, use and enjoy the Goods and Services and to make such Goods and Services available to and used by the Client's and MML's other Clients, and for a Client's and MML's own internal and other proper business purposes.
- 22.7 MML hereby grants to the Supplier for the Term a royalty free, non-exclusive, non-sub licensable, revocable, non-transferable and non-assignable licence to use MML IP in the UK, and where applicable the Deliverables, solely for the purpose of, and to the extent necessary to provide the Services and to perform its obligations on the terms of this Agreement, and for no other purpose and only in the manner and term approved in writing by MML.
- 22.8 The licence granted under Clause 22.7 will terminate on the date on which the Supplier ceases to provide the Services or at the end of the Term, whichever is earlier.
- 22.9 Neither the Supplier, nor any of its Sub-contractors, shall acquire any right, including Intellectual Property Rights, title or interest in or to any MML IP and the Supplier may use the same only under the licence granted under Clause 22.7.
- 22.10 The Supplier shall promptly surrender and/or destroy at MML's instruction any items comprising MML IP and/or the Deliverables and all copies thereof to MML each time when requested to do so by MML and in any event automatically upon the expiry or termination of this Agreement.
- 22.11 The Supplier shall take and procure the taking of all necessary steps to ensure that the foregoing provisions of this Clause have full effect, such steps to include the insertion of corresponding provisions in any contracts with designers and third party suppliers and in other sub-contracts hereunder.
- 22.12 Subject to the foregoing, those parts of any software (including all source code, documentation and preparatory designs, together the **Software**) specifically developed or written by the Supplier or its third party supplier in connection with the Agreement and all Intellectual Property Rights therein shall belong to and vest in MML absolutely, and the Supplier hereby assigns (and shall procure the assignment) to MML with full title guarantee by way of present assignment all right, title and interest, whether legal or beneficial in and relating to the Software (whenever created), and all present and future Intellectual Property Rights in and to the Software throughout the world absolutely and for the full duration thereof, including all extensions and renewals. The Supplier shall ensure, and undertakes to procure, that all moral rights in the Software are waived unconditionally and irrevocably and are not asserted.

- 22.13 The Supplier will not make any representation or do or permit to be done any act which may be taken to indicate that it has any right (including, any Intellectual Property Rights), title or interest in or to the ownership or use of the MML IP and acknowledges that nothing contained in this Agreement shall give the Supplier any right, title or interest in or to the MML IP.
- 22.14 Save as permitted under this Agreement, the Supplier undertakes not and shall procure that its Sub-contractors undertake not:
- (a) to do or permit to be done anything which jeopardises or impairs the registrations of the MML IP (where such rights are capable of registration) or which dilutes, debases or reduces the commercial value of the MML IP or do anything which damages or dilutes the value, reputation or goodwill in the MML IP or prejudices their legal protection;
 - (b) to use the MML IP in combination with any other trade mark or logo, without the prior written approval of MML;
 - (c) to use the MML IP as part of any corporate, trading, business, domain name or meta-tag;
 - (d) to use any other trade mark so resembling the MML IP to be reasonably likely to cause confusion; or
 - (e) hold anywhere in the world any applications or registrations for trademarks which contain the MML IP or any confusingly similar word or words (and shall not authorise or assist any third party to do so).
- 22.15 The Supplier acknowledges that any breach of this Clause 22, or any act or omission by it which damages in any manner the reputation, image or prestige of the MML IP may be of serious detriment to the business and operation of MML or Clients of MML.

23 Intellectual property rights indemnity

- 23.1 The Supplier will, at its own expense, on demand, fully and effectively indemnify and keep indemnified and settle or defend and pay all losses, damages, costs, expenses, claims and other liabilities resulting from or in connection with (i) any claim that the-Goods, the Services or Deliverables or the use or provision of the Goods, Services or Deliverables or any hardware, software or facilities or any materials made available or licensed by the Supplier under or in connection with this Agreement or used to provide the Goods or Services, including the Supplier IPR (or any part thereof) and Software infringes the Intellectual Property Rights or any other rights of any third party; or (ii) any infringement by the Supplier of any Intellectual Property Rights licensed to the Supplier or MML or arising out of any breach by the Supplier.
- 23.2 MML shall notify the Supplier in writing as soon as reasonably practicable of any allegations of infringement of which it has notice and will not make any admissions without the Supplier's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.
- 23.3 Subject to Clause 23.5, MML shall (subject to MML's approval) at the Supplier's request and expense and subject to the Supplier taking over conduct within a reasonable period of time after becoming aware of any potential claim, permit the Supplier to have control of and settle all negotiations and deal with the defence of the claim which shall be reasonably conducted by the Supplier.
- 23.4 MML shall, at the request and expense of the Supplier, afford reasonable assistance with such negotiations or litigation.
- 23.5 If the Supplier fails to demonstrate, in MML's reasonable opinion, that it has assumed control over the defence and/or settlement of the claim, and/or where MML in its sole discretion,

considers that the claim could be harmful to its reputation or good standing or disruptive to its business, then MML shall have the right to defend and settle the claim in such manner as it may deem appropriate, at the cost and expense of the Supplier and in such circumstances the Supplier shall, at its own expense and at MML's request provide MML with all assistance for the purpose of investigating and responding to the claim.

- 23.6 MML shall be entitled to require the Supplier to take over conduct of any claim, settle all negotiations and deal with the defence of the claim at the Supplier's cost, subject always to MML's consent to any defence or proposed settlement.
- 23.7 The Supplier will fully and effectively indemnify and keep indemnified MML on written demand in respect of all losses, damages, costs, expenses, claims and other liabilities incurred by or awarded against MML or any member of its Group arising out of any infringement by the Supplier or any Sub-contractor of any MML Intellectual Property Rights.
- 23.8 If MML's use of the Goods or Services is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights or if MML is advised by legal counsel that such use or possession is likely to constitute such an infringement then (without prejudice to any of MML's other rights and remedies under this Agreement or otherwise at Law or in equity) the Supplier shall promptly at MML's option and without prejudice to any other right or remedy under this Agreement, at Law or in equity:
- (a) procure for MML the right to continue purchasing the Goods or using the Services in the manner provided for under this Agreement; or
 - (b) modify or replace the Goods and/or Services as soon as reasonably practicable (without detracting from their overall performance) so as to avoid the infringement or alleged infringement, without prejudice to the representations and warranties in this Agreement in relation to all or any part of the Goods or Services (in which event the Supplier shall compensate MML for the amount of any direct loss and/or damage sustained or incurred by MML during such modification or replacement).
- 23.9 Compliance with Clause 23.8 shall be at the expense of the Supplier.

24 Monitoring of performance and services credits

- 24.1 The Supplier shall:
- (a) monitor its performance of the Services to the Service Standards and the Service Levels;
 - (b) report any failures (including any events or circumstances which may adversely affect or delay its performance in whole or in part) in its performance and the actual level of performance it has achieved to MML Contract Manager;
 - (c) report any delay or failure of performance under, or termination of, any sub-contract with any Sub-contractor; and
 - (d) deduct any applicable Service Credits from the Charges payable in the next invoice submitted by the Supplier to MML under Clause 16 (Charges and payment).
- 24.2 If the Supplier fails to provide the Services in accordance with this Agreement and/or fails to achieve the performance standards described herein, the Supplier shall promptly at no additional cost:
- (a) identify the cause of any failure;

- (b) take whatever action is reasonably necessary to minimise the impact of that failure and prevent it from recurring;
 - (c) correct the failure if it is a failure which can be corrected immediately or if not, put forward a rectification programme which sets out in reasonable detail the measures the Supplier will adopt to remedy the failure and the timetable for implementation of those measures and rectification of the failure (the **Rectification Proposal**); and
 - (d) keep MML informed of the status of remedial efforts and any rectification programme being undertaken with respect to the underlying cause of the failure.
- 24.3 Any Rectification Proposal proposed by the Supplier shall be subject to MML prior written consent.
- 24.4 If at any time the Supplier fails to remedy any breach of its obligations under this Agreement, then MML may, having first given notice to the Supplier, invoke the Step-in Rights as set out in Clauses 26.4 or 26.5 and itself take such steps as are necessary to remedy that breach or engage others to take those steps. The Supplier shall reimburse MML for all costs reasonably incurred by it in taking or engaging others to take those steps (including the relevant administrative expenses of MML which may include a reasonable sum in respect of Staff costs and overheads).
- 24.5 If the Supplier fails to provide the Services in accordance with the Service Standards and the Service Levels or its other obligations under this Agreement it shall incur Service Credits which shall be calculated as set out in Schedule 5 or as otherwise agreed.
- 24.6 If the Supplier accrues Service Credits in any Period, MML shall be entitled to receive a rebate of the applicable sum.
- 24.7 MML may verify the Supplier's performance of the Services to the Service Standards and the Service Levels at any time (or times) and in any manner it wishes.

25 Data protection

- 25.1 Upon request by MML, the Supplier shall provide to MML promptly such copies of any Personal Data provided by or on behalf of MML to the Supplier under this Agreement and do such other acts in relation to the Personal Data or any part thereof as MML shall request which are required in order for MML to comply with any of its obligations under the Data Protection Act 1998 (the **Act**) or the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (the **Regulations**) or DP Regulations (as defined below) or to give effect to the exercise of any of the rights under Part II of the Act of data subjects (as defined under Section 1 of the Act) (**Data Subjects**) or the Regulations or DP Regulations.
- 25.2 The Personal Data is provided to the Supplier for the purposes of the Supplier processing it as MML data processor (as that expression is defined under Section 1 of the Act) (**Data Processor**). The Supplier agrees and acknowledges that it shall process the Personal Data on behalf of MML only as a Data Processor and that it will only act on the instructions of MML in relation to all processing of the Personal Data and for the avoidance of doubt the Supplier agrees and acknowledges that it shall not (either alone or jointly in common with other persons), and that only MML shall, determine or seek to determine the purposes for which and the manner in which any Personal Data are, or are to be, processed.
- 25.3 The Supplier represents, warrants and undertakes to MML that:
- (a) it shall comply at all times with the requirements of the Act and the Regulations as may be amended from time to time (together **DP Statutes**) and with any codes of practice or other guidance issued by the Office of the Information Commissioner and any other

statutes, regulations or directives from time to time relating to the processing of Personal Data (together **DP Regulations**) and it shall not cause MML to be in breach of any DP Statutes or DP Regulations;

- (b) it is able to and shall at all times process any Personal Data in accordance with, and without causing any breach of, its obligations or MML's obligations under DP Statutes and DP Regulations;
 - (c) it will at all times continue to hold a valid and up to date notification in accordance with the Act and shall only process Personal Data in accordance with it;
 - (d) it shall at all times comply with, and ensure that at all times its employees, directors partners and Sub-contractors comply with any guidelines, codes of practice, policies or other requirements notified to it by MML in connection with processing Personal Data or DP Statutes or DP Regulations; and
 - (e) it shall not transfer any Personal Data to any other party (including, without limitation any data processor or other contractor) without the prior written consent of MML and unless permitted under DP Statutes and DP Regulations;
 - (f) It shall not process Personal Data outside of the EEA; and
 - (g) it shall not use any Sub-contractors to process Personal Data.
- 25.4 Without prejudice to the foregoing, the Supplier acknowledges and agrees that it shall ensure that all appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and that it shall deal with the Personal Data only for the purposes and in accordance with its obligations set out in this Agreement.
- 25.5 If the Supplier receives any complaints from any individuals or is approached by the Office of the Information Commissioner in connection with any Personal Data, the Supplier shall immediately inform MML and keep it informed of the progress and outcome of such complaint or approach.
- 25.6 In the event that the Supplier fails to comply with the provisions of this Clause 25 then it shall defend, indemnify and keep MML fully and effectively indemnified against any and all claims, losses, damages, costs, expenses and proceedings arising from or in connection with such failure to comply and loss suffered by MML.
- 25.7 The Supplier shall notify MML within five Business Days if it receives a request from a Data Subject for access to that person's Personal Data (**SAR**) and shall provide MML with its full co-operation and assistance for any SAR, whether sent directly to MML or to the Supplier.
- 25.8 If relevant to the Services, the Supplier shall at its own cost ensure that, throughout the term of this Agreement, it shall be PCI compliant/PCI certified and the Services comply with Payment Card Industry Data Security Standards (**PCIDSS**) for the time being and the Supplier undertakes that its performance of the Agreement in accordance with its terms shall not be in breach of the PCIDSS. Furthermore, the Supplier acknowledges and agrees that it shall be responsible for the security of all cardholder data provided to it.
- 25.9 In the event that the Supplier fails to comply with the provisions of Clause 25.3 then it shall notify MML in writing of any failure to comply within 24 hours of the Supplier becoming aware of such failure to comply and the Supplier shall defend, indemnify and hold MML harmless against all claims and proceedings arising from such failure to comply.

26 Termination

- 26.1 Without prejudice to any other rights or remedies it may have either within this Agreement, at Law or in equity, this Agreement may be terminated by MML on written notice to the Supplier, in the following situations:
- (a) in the case of a breach capable of remedy, if the Supplier fails to remedy that breach within 14 days from the date of a notice requiring it to be remedied, save for the loss of Independent Vendor Assessment Accreditation which must be remedied within 7 days;
 - (b) immediately if the Supplier commits any breach which is not capable of remedy;
 - (c) at any time and for whatever reason in its sole discretion by giving the Supplier no less than three months' written notice of its intention to do so;
 - (d) immediately should the Supplier suffer a change in Control or all or substantially all of the assets of the Supplier are transferred to third party;
 - (e) immediately if the Supplier breaches any part of Clauses 20 (Confidentiality) or 25 (Data protection) or any licence entered into in accordance with Clause 22 (Intellectual property rights);
 - (f) immediately if the Supplier fails to achieve the Key Performance Indicators set out in Schedule 4 in three (3) consecutive months, or any four (4) months in a rolling 12 month period;
 - (g) immediately in accordance with Clause 26.7(c); or
 - (h) on 10 days written notice in the circumstances set out in Clause 48.1.
- 26.2 Either Party may by written notice to the other end the Agreement immediately if the other Party is subject to an Insolvency Event. This Clause 26.2 shall apply in the case of events affecting any Affiliate of the Supplier only if the occurrence will have a material effect on the ability of the Supplier to perform its obligations under this Agreement.
- 26.3 In addition to its rights to terminate the Agreement under this Clause 26, and without prejudice to any other of its rights or remedies and to any rights of action which shall accrue or shall have already accrued, MML may, if any of the circumstances referred to in Clauses 26.1 or 26.2 have occurred, take any one or more of the following steps:
- (a) suspend payment to the Supplier of any payments due under this Agreement;
 - (b) exercise its step in rights in accordance with Clause 26.4; or
 - (c) without terminating the whole of this Agreement, terminate the Agreement in respect of part of the Goods or Services only (whereupon a corresponding reduction in the Charges should be made).
- If MML enforces any of its rights under Clauses 26.3(b) or (c), the provisions of Clause 26 shall apply in relation to the part of the Services affected.
- 26.4 Without prejudice to its other rights under Clause 26.3 and notwithstanding any other provision of this Agreement and without prejudice to any other right or remedy of MML, MML may, if any of the circumstances referred to in Clauses 26.1 or 26.2 have occurred, take such steps as may be reasonably necessary to remedy such failure or engage others to take such steps, to deliver the Services in whole or in part (the **Step-in Rights**).

- 26.5 Notwithstanding any other provision of this Agreement and without prejudice to any other right or remedy of MML, in the event that MML (acting reasonably) considers that a breach by the Supplier of an obligation under this Agreement may create an immediate and serious threat to the business operations of MML or in the event of an emergency, MML may invoke such Step-in Rights as MML may think necessary or expedient to mitigate or preclude such state of affairs, and the provisions of Clause 26.6 shall apply.
- 26.6 Except in the event of an emergency (and provided that such emergency does not arise as a consequence of any breach of contract or any negligent act and/or omission of the Supplier) the Supplier shall, where such Step-in Rights are invoked pursuant to Clauses 26.4 or 26.5 and undertaken by MML only, reimburse MML for all additional costs incurred by MML (at a reasonable market rate and having regard to the urgency of the matter in question), or where such Step-in Rights taken pursuant to Clauses 26.4 or 26.5 are undertaken by a third party, reimburse MML for all additional costs incurred by MML in relation to the third party's services (at a reasonable market rate and having regard to the urgency of the matter in question), in each case in excess of the Charges that would otherwise have been payable to the Supplier during such period in connection with the Services the subject of such steps. Where steps are taken by or on behalf of MML pursuant to this Clause, to the extent that Charges would otherwise have been payable to the Supplier in connection with the Services the subject of such steps, the Charges shall, for so long as the relevant Services (or any parts thereof) are not being performed by the Supplier (or any of its permitted Sub-contractors), be reduced by such amount as may be necessary to reflect the reduction in the Services performed by the Supplier (or its permitted Sub-contractors).
- 26.7 If MML invokes its Step-in Rights in accordance with Clauses 26.4 or 26.5 and such steps are taken for a period of 3 months after the commencement of such steps (the **Step-in Period**), then upon the expiry of the Step-in Period MML shall notify the Supplier of its intention to:
- (a) continue to invoke such Step-in Rights; or
 - (b) cease its Step-in Rights, in which case this Agreement shall continue and the Supplier shall resume the provision of the relevant Services (provided that any notice given in accordance with this Clause by MML shall be without prejudice to any entitlement of MML to act upon any grounds available to it under this Agreement to terminate this Agreement); or
 - (c) terminate this Agreement in accordance with Clause 26.1; and/or
 - (d) withhold payment of the Charges.
- 26.8 The Supplier shall promptly notify MML of any event or circumstances entitling MML to exercise any of its rights under Clause 26.1(d) or any situation where the Supplier ought reasonably to expect that such entitlement may arise.
- 26.9 Save for termination due to a breach of Clause 29 (Corruption and bribery) of this Agreement, termination of this Agreement for whatever cause will not affect any other rights a Party may have under the Agreement or at Law or in equity, which either Party already has including any accrued rights or liabilities.

27 Consequences of termination

- 27.1 The Supplier acknowledges that it is critical for MML to have continuity of the Services and for that reason; MML relies significantly on the Supplier fulfilling its obligations under this Clause 27. The Supplier also acknowledges that any handover of the Services will require both MML and the Supplier to devote significant internal and external resources to ensure that MML requirements are adequately met. Accordingly, any failure by the Supplier to perform its

obligations under this Agreement that leads to the application of this Clause before expiry of the Agreement will cause MML to suffer additional loss.

- 27.2 Within 14 days of serving notice of termination upon the Supplier for any reason, MML shall advise the Supplier of the identities of any clients in respect of whom the Supplier must continue to perform its obligations under this Agreement and in each case for how long after termination.
- 27.3 The provisions of this Agreement shall continue in full force and effect to the extent and for the length of time post termination required to enable MML to fulfil its obligations under the Agreement.
- 27.4 Within 90 days after the Effective Date, the Supplier shall prepare a draft Handover Plan and submit that plan to MML for its approval. The Handover Plan shall address termination arising from any cause and include the activities to be undertaken by the Supplier to facilitate a smooth handover of the Services, or any part of the Services, to MML or any replacement supplier nominated by MML (reflecting the principles in this Clause 27) and the timetable and manner in which the transfer back, of the Services, or any part of the Services, as the case may be, then provided by the Supplier is to be managed.
- 27.5 MML shall if it so wishes, within a reasonable time, provide its comments on the draft Handover Plan. The Parties will discuss MML comments and the Supplier will then promptly prepare a revised Handover Plan which addresses MML comments and submit it to MML for approval.
- 27.6 Once MML has approved in writing the draft Handover Plan, it will form part of this Agreement.
- 27.7 The Supplier shall keep the Handover Plan up to date and shall submit an updated Handover Plan at least annually and within 30 days after the date of any notice given in accordance with Clause 26 (Termination). Clauses 27.5 and 27.6 will apply to each updated version of the Handover Plan.
- 27.8 MML may, at its option, exercise any of the rights and/or require the Supplier to carry out any of the obligations set out in the remaining provisions of this Clause 27.
- 27.9 The Supplier shall provide handover assistance in accordance with the Handover Plan from the earlier of:
- (a) 6 months before the expiry of the Agreement or such earlier date as MML may reasonably request; and
 - (b) the date on which the Agreement expires or such earlier or later date as MML may reasonably request.
- 27.10 The Supplier shall co-operate with MML and any New Supplier in ensuring the smooth handover and continued running of the Services during the Handover Period in accordance with the Handover Plan and in particular, without limitation, the Supplier shall, to the extent required by MML:
- (a) perform the Services up to the end of the Handover Period to the Service Standards and in accordance with the Service Levels;
 - (b) forthwith provide a comprehensive list of all third party obligations and outstanding financial commitments in respect of the Services which shall form the basis of arrangements to settle or transfer those obligations and/or commitments as soon as reasonably practicable. For the avoidance of doubt MML shall have no obligation or

liability in respect of any such financial commitments which shall remain with the Supplier;

- (c) allow MML and any New Supplier reasonable rights of access to any premises of the Supplier during the Handover Period;
 - (d) provide MML with reasonable access to the Staff who were performing the Services during the 3 months prior to the Handover Period;
 - (e) give MML all reasonable assistance to employ or engage the Supplier's Staff or employ or engage substitute personnel, including by providing to MML and ensuring that its Sub-contractors provide to MML (subject to the consent of the relevant personnel):
 - (i) reasonable access to the Staff for interviews and recruitment; and
 - (ii) an organisational chart showing the roles, responsibilities, authority and terms and conditions of employment of all Staff employed in providing the Services;
 - (f) provide sufficient number of man days as MML shall request of technical advice at no charge to MML at any time during or up to three months following the end of the Handover Period to enable MML to be satisfied that the handover has been properly effected in accordance with the Handover Plan;
 - (g) forthwith following the end of the Handover Period, return to a Client or MML (as appropriate) all property (including any Issued Property), information, materials, equipment and data in its possession or under its control that belongs to or has been provided by or on behalf of a Client or MML and/or which relates to the Services or to this Agreement. In relation to Confidential Information which relates to a Client or MML in its custody or control, at MML's option to return such Confidential Information or destroy such Confidential Information and/or irretrievably delete the same if stored on electronic or magnetic media and promptly certify to MML that this has been done; and
 - (h) forthwith following the Handover Period render a final invoice.
- 27.11 The Supplier warrants that any items delivered to MML or a New Supplier pursuant to the Handover Plan shall as at the date of transfer be in reasonable working order and condition (fair wear and tear excepted).
- 27.12 The Supplier shall obtain the consent of any relevant third party to any transfers pursuant to the Handover Plan.
- 27.13 If termination of this Agreement results from exercise by MML of any termination rights pursuant to Clause 26 (Termination) (except for the right to terminate contained in Clause 26.1(c)), all costs incurred by MML in respect of the transfer back to MML, or on to a New Supplier, of the Services shall be met by the Supplier.
- 27.14 Following termination of the Agreement the licence granted in Clause 22.7 shall terminate and the Supplier shall immediately cease all use of MML IP and the Deliverables.
- 27.15 In the event of termination of the Agreement by MML under Clauses 26.1 (save for Clause 26.1(c)) or 26.2, the Supplier shall immediately refund to MML, on demand, a sum equal to any Charges paid in advance in respect of Services which have not been rendered in accordance with this Agreement at the date of termination.
- 27.16 Notwithstanding the foregoing, the Supplier shall following termination of this Agreement, at its own expense, fully co-operate with and assist MML in order to ensure that such termination and its consequences cause the minimum disruption to MML and its business

including taking all reasonable steps to mitigate any costs which MML may incur as a result of termination of this Agreement.

28 Business continuity management

28.1 The Supplier shall:

- (a) have an adequate business continuity plan in place ("**Business Continuity Plan**");
- (b) at all times maintain an up-to-date Business Continuity Plan in accordance with Good Industry Practice in relation to the Services;
- (c) submit the Business Continuity Plan to MML for review on reasonable request from MML;
- (d) comply with MML's reasonable request about modifications to the Business Continuity Plan; and
- (e) comply with the Business Continuity Plan at all times.

29 Corruption and Bribery

29.1 The Supplier shall:

- (a) comply with all Applicable Laws relating to anti-bribery and corruption including the Bribery Act 2010 (the **Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with any of a Client's and/or MML's policies relating to ethics, anti-bribery and anti-corruption as communicated and updated by a Client and/or MML from time to time (the **Relevant Policies**);
- (d) have, and shall maintain in place throughout the Term, its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 29.2, and will enforce them where appropriate;
- (e) promptly report to MML any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- (f) immediately notify MML if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement); and
- (g) within 3 months of the date of this Agreement, and annually thereafter, certify to MML in writing signed by an officer of the Supplier, compliance with this Clause 29 by the Supplier and all persons associated with it and all other persons for whom the Supplier is responsible under Clause 29.1. The Supplier shall provide such supporting evidence of compliance as MML may reasonably request.

29.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those

imposed on the Supplier in this Clause 29 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to MML for any breach by such persons of any of the Relevant Terms.

- 29.3 For the purpose of this Clause 29, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 29 a person associated with the Supplier includes all Staff.

30 Variation

- 30.1 No variation to this Agreement shall be valid or effective unless it is in writing and signed in accordance with the Change Control Procedure.
- 30.2 MML may add or remove Premises in respect of which it requires the Supplier to provide the Goods and Services. Variations to Premises shall be charged at the agreed rates.

31 Assignment and transfer

- 31.1 The Supplier shall not be entitled to assign, transfer, subcontract or otherwise deal with any of its rights and obligations arising under or in connection with this Agreement (and/or any Ancillary Documents) except with the express written consent of MML which MML may grant or withhold in its absolute discretion.
- 31.2 This Agreement (and/or any Ancillary Document) may be assigned or novated by MML, in whole or in part, at any time and on more than one occasion to any member of the MML Group, any Other Service Provider, a Client, or any successor of all or part of the MML Group's business.

32 Sub-contracting

- 32.1 The appointment of Sub-contractors or the performance of the Supplier's obligations by or through any person other than the Supplier shall be subject to the prior written approval of MML. However, MML approval shall not discharge the Supplier in any respect from its duty properly and punctually to meet its obligations under the Agreement and the Supplier shall remain liable to MML for any performance or non-performance of such obligations, whether by the Supplier or any of its officers, employees or agents.
- 32.2 The Supplier shall promptly and fully inform each Sub-contractor, officer, employee or agent as to the provisions contained in the Agreement (including these conditions) which apply to them and shall ensure that each sub-contract with its Sub-contractors and other arrangements with employees or agents ensure that such Sub-contractors, officers, employees and agents are bound to such provisions of the Agreement, as relevant as if those provisions were incorporated in that sub-contract.

33 Employees

- 33.1 The parties shall comply with the terms of Schedule 10.
- 33.2 The Supplier shall be responsible for the recruitment and training of sufficient Staff to perform the Services. To the extent permitted by law the Supplier shall conduct criminal record checks, credit reference checks and such other background checks on the Staff as shall be required by MML before the Staff start work with the Supplier. The Supplier shall communicate the results of these checks to MML on request.
- 33.3 At all times, the Supplier shall ensure that:

- (a) each of the Staff is suitably qualified, adequately trained, holds appropriate professional qualifications, and is capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Staff to provide the Services properly;
 - (c) only those people who are authorised by the Supplier are involved in providing the Services;
 - (d) all of the Staff comply with all of a Client's and/or MML's policies including, IT, security, and health and safety policies and those that apply to persons who are allowed access to the applicable a Client's Premises;
 - (e) all of the Staff conform to the same standards of hygiene, discipline and security that apply to MML and/or its Clients' staff from time to time, and that they dress appropriately and comply with all site policies in force at any Client's Premises from time to time;
 - (f) if requested whilst on a Client's Premises or upon entering or leaving a Client's Premises, the Staff submit to a search, which might include a search of their property;
 - (g) if requested, provide security clearance for all applicable Staff, undertaken by a recognised body; and,
 - (h) all Staff are legally entitled to work in the United Kingdom, and that all applicable documents and visas are kept up to date.
- 33.4 A Client may refuse to grant access to, or require the removal from a Client's Premises of, any member of the Supplier's Staff who does not comply with the requirements of Clause 33.3 or who a Client otherwise believes in its sole discretion is unsuitable to be on a Client's Premises.
- 33.5 The Supplier shall replace any of the Supplier's Personnel who MML reasonably decides have failed to carry out their duties with reasonable skill and care or who do not comply with the requirements of Clause 33.3. Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 33.6 The Supplier shall use its best endeavours to ensure continuity of Staff and to ensure that the turnover rate of its Staff is at least as good at the prevailing industry norm for similar services, locations and environments.
- 33.7 The Supplier shall maintain up-to-date personnel records on the Staff and, within 14 days of receiving a request from MML, provide the Employment Particulars in relation to the Staff. The Supplier shall ensure at all times that it has the right to provide these records under DP Regulations.
- 33.8 The parties agree that the Supplier will not provide the Excluded Services without the prior written consent of MML. If the Supplier provides the Excluded Services without the prior written consent of MML contrary to this Clause 33.8, the Supplier will indemnify and hold harmless MML for any losses, costs, damages, expenses and claims incurred by it or them arising out of any breach or alleged breach of this Clause 33.8, including but not limited to any failure to comply with Regulations 5, 12, 13 and 17 of the AWR
- 33.9 In the event that the Supplier requests the written consent of MML to provide the Excluded Services and MML is prepared to provide this consent, the parties will agree terms relating to the provision of the Excluded Services.

- 33.10 In the event that the Supplier receives an allegation that there has been a breach of the AWR in relation to the supply of any person to MML by the Supplier, it will provide a copy of that allegation to MML's Contract Manager within 7 days of receipt. The parties shall co-operate with each other in relation to responding to any such allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

34 Audit and reporting

- 34.1 The Supplier shall, and shall procure that its Sub-contractors shall, maintain complete and accurate records of and supporting documentation for all transactions and work and activities both financial and non-financial that result from or are created in the performance of its obligations under this Agreement.
- 34.2 The Supplier shall, and shall procure that its Sub-contractors shall, make available promptly to MML in accordance with any provision of this Agreement and otherwise promptly on request any information requested by MML, including but not limited to:
- (a) any information required by MML for:
 - (i) monitoring the Supplier's performance of, and compliance by the Supplier with its obligations under this Agreement;
 - (ii) understanding fully how and on what basis the Goods and/or Services are being provided and/or the Charges are being calculated;
 - (iii) MML accounts;
 - (iv) the fulfilment of MML reporting and other obligations to any governmental, regulatory or other authority;
 - (v) verifying compliance with the business continuity plan referred to in Clause 28 (Business continuity management) in accordance with this Agreement;
 - (vi) investigating or identifying suspected fraud or material accounting mistakes or security breaches;
 - (vii) verifying the Supplier's compliance with all health and safety obligations;
 - (viii) verifying and inspecting any assets of MML in the Supplier's possession or control (including MML's IPRs); and
 - (ix) verifying such other issues related to the provision of the Goods and/or Services to the legal, regulatory, operational and technical ability of the Supplier and/or the Sub-contractors to provide the Goods and/or Services over the Term in accordance with the terms of this Agreement, as MML may reasonably require,
 - (b) the Supplier's audited accounts together with any relevant internal control reports produced by its auditors.
- 34.3 The Supplier shall, and shall procure that its Sub-contractors shall, allow on reasonable notice any of MML's staff and their internal and external auditors access to such information, allow them to copy and remove the copies of it and provide such explanations as may in the opinion of MML be necessary for audit purposes.
- 34.4 The Supplier shall include audit provisions in any agreement with its Sub-contractors to allow MML to exercise audit rights in relation to such Sub-contractors.

- 34.5 The Supplier will undertake regular internal audits of its operations and the Supplier's compliance with its policies and procedures and the performance of its obligations in compliance with this Agreement and, where relevant and appropriate, make executive summaries of the results of such audits available to MML.
- 34.6 Subject to Clause 34.7 each Party will bear its own internal costs and the costs of any third party advisors or auditors used by that Party in relation to any audit undertaken in accordance with this Clause 34, but the Supplier shall be responsible for the costs of any agreed remedial actions (including any costs associated with demonstrating to the Parties reasonable satisfaction that such remedial action has been taken).
- 34.7 If MML demonstrates that the Supplier has failed to provide required information, that any information previously made available to MML was to any material degree inaccurate or incomplete or that the allocation of the Supplier's resources, overheads or costs was unreasonable in the circumstances the Supplier shall:
- (a) bear the reasonable costs incurred by MML in exercising its right under Clause 34.3; and
 - (b) adjust the Charges and/or invoices issued to MML to correct the inaccuracies and reimburse MML for any resulting overpayment together with interest from the date of overpayment to the date of reimbursement calculated daily at a rate of 1% above Bank of England base rate effective on the date of overpayment.
- 34.8 The Supplier shall at all times during the duration of the Agreement, the Handover Period and for a period of six years thereafter (or such other period as may be agreed by the Parties in respect of particular information, materials or statements) retain safe and secure and make available for inspection at all times by MML all materials, information, statements and papers of all descriptions which may be acquired or produced by the Supplier in the supply of Goods and the performance of the Services.

35 Initiation of change

- 35.1 Subject always to Clause 35.2,
- (a) MML may from time to time require the Supplier to implement a Change; or
 - (b) the Supplier may initiate Changes or request Changes.
- 35.2 Any Change shall be made only in accordance with the Change Control Procedure. Until a Change has been made in accordance with that procedure, the Supplier shall continue to operate this Agreement as if the request or recommendation had not been made.
- 35.3 In the event of a dispute as to whether any Change is technically practicable or whether it should reasonably give rise to any change to this Agreement, the matter shall be referred for resolution in accordance with Clause 46 (Dispute resolution).

36 Non-Exclusivity

- 36.1 The Parties acknowledge that the Supplier has not been appointed by MML on an exclusive basis to provide the Goods or Services or goods or services similar in nature to the Goods or Services, and that MML or Clients of MML may perform any part of the Services itself or appoint an Other Service Provider to do. Save as expressly set out in this Agreement, MML has no commitment to procure any minimum volume of the Goods or Services from the Supplier.
- 36.2 The Supplier represents, warrants and undertakes that it will not provide goods or services similar in nature to the Goods or Services to any of MML or MML's Client's competitors that may be notified to the Supplier from time to time.

37 Beneficiaries to this contract

- 37.1 Each member of the MML Group shall have the benefit of all rights, benefits and limitations provided for in this Agreement and accordingly shall be entitled to enforce this Agreement subject to and in accordance with its terms.
- 37.2 Any Transferee shall be entitled to rely upon the provisions of Clause 33 in its entirety and the relevant terms of this Agreement shall be used to interpret the provisions of Clause 33 where necessary.
- 37.3 Notwithstanding Clause 37.1, MML and the Supplier may agree to rescind or vary this Agreement without the consent of any other person or entity.
- 37.4 Except as provided in Clause 33, Clause 37.1 and Clause 37.2, this Agreement is not intended to be for the benefit of, and shall not be enforceable by any person, other than a Party, under the Contract (Rights of Third Parties) Act 1999.

38 Waiver

Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any other exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent or other breach, nor will any single or partial exercise of any right preclude any other or further exercise of such right or the exercise of any other right. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing, refers expressly to this Clause, is duly signed on behalf of the Party granting it and is communicated to the other Party in accordance with Clause 41 (Notices).

39 Severability

- 39.1 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision will apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the parties.
- 39.2 To the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 39.1, the Parties intend each provision of this Agreement to be severable and distinct from the others, and such provision, to the extent it is illegal, invalid or unenforceable, shall be deemed not to form part of this Agreement, and the Parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

40 Survival of rights

- 40.1 Termination or expiry of this Agreement for any reason shall not affect:
 - (a) any rights or liabilities that have accrued prior to such termination or expiry; or
 - (b) the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.
- 40.2 Without prejudice to the generality of Clause 40.1, the following Clauses shall continue in force on and after the termination or expiry of this Agreement: 17 (Limitation of liability, indemnity and insurance), 20 (Confidentiality), 21 (Public statements), 22 (Intellectual property rights), 23 (Intellectual property rights indemnity), 25 (Data protection), 27 (Consequences of termination), 33 (Employees), 37 (Beneficiaries to this contract), 38

(Waiver), 41 (Notices), 45 (Governing law and jurisdiction), 46 (Dispute resolution) and 47 (Further assurance) shall survive the termination of this Agreement.

41 Notices

41.1 The details for the service of any notice, claim or demand in accordance with this Agreement (**Notices**) are:

(a) in the case of the Supplier:

Attention: [◆]

Address: [◆]

Facsimile No: [◆]

(b) in the case of MML:

Attention: Company Secretary

Address: Apollo House, 6 Bramley Road, Mount Farm, Milton Keynes, MK1 1PT

Facsimile No: 01908 391499

41.2 All Notices shall be in writing, in English, marked for the attention of the person specified in Clause 41.1 and delivered by hand or sent by pre-paid registered post (or courier using an internationally registered courier company if sent abroad) or sent by facsimile transmission to the address detailed for the Party in Clause 41.1. A Party may change the details recorded for it in Clause 41.1 by notice to the other in accordance with this Clause 41.

41.3 A Notice shall be treated as having been received:

- (a) if delivered by hand or by pre-paid registered post or courier at the time of delivery; and
- (b) if sent by facsimile transmission, upon receipt by the sender of the facsimile transmission a written report that the facsimile has been transmitted to the addressee.

42 Entire Agreement

42.1 Subject to Clause 8 (Acceptance and defective Goods) and Clause 12 (Service Representations and Warranties):

- (a) this Agreement sets out the entire agreement and understanding between the Parties, and supersedes all proposals and prior written or oral agreements, arrangements and understandings between the Parties, relating to its subject matter, unless otherwise agreed in writing;
- (b) each Party acknowledges that in entering into this Agreement it does not rely on any representation, warranty, undertaking, collateral contract or other assurance of the other Party that is not set out in this Agreement; and
- (c) so far as permitted by Law, each Party acknowledges and agrees that the only rights and remedies available to it in respect of any such representation, warranty, undertaking, collateral contract or other assurance shall be for breach of this Agreement and waives all other rights and remedies (including those in tort or arising under statute) which, but for this Clause 42, might otherwise be available to it

but nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

- 42.2 No variation of this Agreement shall be effective unless in writing and signed by MML, and in accordance with the Change Control Procedure.

43 Counterparts

This Agreement may be entered into in any number of counterparts and by the Parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

44 No partnership or agency

Nothing in this Agreement is to be construed as establishing or implying any partnership or joint venture between the Parties, or as appointing any Party as the agent or employee of any other Party. No Party shall hold out any other Party as its partner or joint venture. Except and to the extent that this Agreement expressly states otherwise, no Party may incur any expense or negotiate on behalf of any other Party or commit any other Party in any way to any person without that other Party's consent.

45 Governing law and jurisdiction

- 45.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be interpreted in accordance with English Law.
- 45.2 Subject to the provisions of Clause 46 (Dispute resolution) each Party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Agreement.

46 Dispute resolution

- 46.1 The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.
- 46.2 If a Dispute arises between MML and the Supplier during the Term in relation to any matter which cannot be resolved by local operational management either Party may refer the matter for determination in accordance with the procedure set out in Clause 46.3.
- 46.3 A Dispute referred for determination under Clause 46.2 shall be resolved as follows:
- (a) by referral in the first instance to the decision of Category Manager of MML and Account manager of the Supplier; and
 - (b) if a Dispute is not resolved within 14 days of its referral pursuant to Clause 46.3(a), such Dispute shall be referred to Head of Procurement of MML and Director of the Supplier; and
 - (c) if a Dispute is not resolved within 21 days of its referral pursuant to Clause 46.3(b) such Dispute shall be referred to Company Secretary of MML and Managing Director of the Supplier.
- 46.4 Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this Clause 46, such clause not applying in respect of any circumstances where such remedies are sought.

47 Further assurance

The Supplier shall at its own cost do and/or execute, or arrange for the doing and/or execution of, any act and/or document reasonably requested of it by MML to implement and give full effect to the terms of this Agreement.

48 Force majeure

- 48.1 If and to the extent that either Party is prevented or delayed by a Force Majeure Event from performing any of its obligations under this Agreement and promptly so notifies the other Party, specifying the matters constituting the Force Majeure Event together with such evidence in verification thereof as it can reasonably give and specifying the period for which it is estimated that the prevention or delay will continue, then the Party so affected shall be relieved of liability to the other Party for failure to perform or for delay in performing such obligations (as the case may be) and shall not be in breach of the terms and conditions of this Agreement as a result of that failure or delay, but shall nevertheless use its reasonable endeavours to resume full performance thereof. If the Force Majeure Event continues for a period of 30 (thirty) days or more following notification, the Party not suffering the Force Majeure Event may terminate this Agreement by giving not less than 10 (ten) days' prior written notice to the other Party, but the notice of termination shall be of no effect if the Party suffering the Force Majeure Event resumes full performance of its obligations before the expiry of the notice period.
- 48.2 MML may notify the Supplier of any Force Majeure Event. Upon receipt of such notice, without prejudice to its obligations under Clause 48.1, the Supplier shall promptly propose to MML a disaster recovery plan for approval by MML.
- 48.3 During the period of any Force Majeure Event, the Supplier shall use its reasonable endeavours to rectify the Force Majeure Event.
- 48.4 The Supplier shall not unreasonably withhold its agreement for MML to engage a third party in the supply of the Goods or performance of the Services for the purposes of this Clause 48 and shall take all actions that MML may reasonably request in connection with such engagement.
- 48.5 Upon any Force Majeure Event, MML's obligation to pay the part of the Charges that relate to the part of the Goods or Services that are not provided shall cease until such obligation recommences in accordance with Clause 48.7.
- 48.6 The Supplier shall notify MML immediately once the Force Majeure Event has been remedied and shall demonstrate to MML reasonable satisfaction that the Supplier is able to provide the relevant Services in compliance with this Agreement.
- 48.7 Upon the Supplier providing the Goods or Services previously affected by the Force Majeure Event to MML or if MML chooses not to request such Goods or Services from the Supplier, within 5 (five) days from the Supplier's successful demonstration under Clause 48.6 MML's obligation to pay the relevant part of the Charges (suspended under Clause 48.5) shall recommence.

49 Rights cumulative

The rights and remedies of the Parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by this Agreement, Law, equity or otherwise. Except as expressly stated in this Agreement (or in Law or in equity in the case of rights and remedies provided by Law or equity) any right or remedy may be exercised wholly or partially from time to time.

50 Costs

Except as otherwise stated in this Agreement each Party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Agreement and all Ancillary Documents and any changes to this Agreement or such Ancillary Documents.

51 Non-solicitation

- 51.1 Except as expressly permitted by this Agreement or as required by law, neither Party shall, and each Party shall procure that none of its agents or contractors or any member of its Group shall, without the prior written consent of the other Party, directly or indirectly solicit or endeavour to entice away from the other Party or its Group, or induce or cause a third party to induce any employee of any member of the other Party's Group with whom the other Party or its agent or contractor has had contact in connection with this Agreement, to enter into a contract for service or a contract of employment with either a member of the other Party's Group or any agent or contractor of the other Party, whether or not such person would in so doing commit any breach of his contract of service or agency (as applicable).
- 51.2 Unless otherwise agreed in writing, the restrictions referred to in Clause 51.1 shall apply in respect of a given employee during the relevant period of contact and for a period of 12 months thereafter.
- 51.3 In the event of a breach of Clause 51.1 the breaching Party shall pay to the other Party a sum equivalent to the employment costs incurred by that Party in respect of the relevant employee in the 3 month period immediately preceding the employee's resignation. The Parties agree that the payment of such a sum is a genuine pre-estimate of loss or damage likely to be suffered by the affected Party arising from the other Party's breach of Clause 51.1
- 51.4 The placing of an advertisement of a post available to a member of the public generally shall not constitute breach of this Clause 51.

52 Withholding tax

- 52.1 In the event that any payment to be made in respect of any invoice is subject by Law to any withholding tax, the payer shall make payment to the payee of the amount owing, less a deduction for such withholding tax and shall account to the relevant Tax Authority for the withholding tax provided always that the payer has possession, as furnished by the payee, of declaration(s) of tax residence on the prescribed forms and certification of the UK (or other as relevant) Tax Authority which are current and accurate in order to confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty, the amount of withholding tax deducted will be calculated by the payer in accordance with any appropriate double taxation convention and/or treaty between the states in which the payer and the payee respectively reside. The payee shall furnish declaration(s) of tax residence on the prescribed forms and obtain certification of the UK (or other as relevant) Tax Authority in order that the payer may confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty as envisaged above. Payment of such net sum to the payee and to the relevant Tax Authority of the said withholding tax shall, for the purposes of this Agreement, constitute full settlement of the sums owing under the relevant invoice.
- 52.2 Without prejudice to payment in accordance with Clause 16 (Charges and payment) constituting full settlement of the sums owing under the relevant invoice, the payer shall use reasonable endeavours to obtain and provide to the payee evidence from the relevant local Tax Authority of the payment of the said withholding tax (including, where available, tax deduction certificates or the equivalent thereof). Where the payer is not able to obtain such

evidence (having used reasonable endeavours), the payer will provide written confirmation itself to the payee of the payment of said withholding tax.

53 Time of essence

Time shall be of the essence of this Agreement, both as regards any dates, times and periods mentioned and as regards any dates, times and periods which may be substituted for them in accordance with this Agreement.

54 Precedence

In the event and to the extent of any conflict or inconsistency between any of:

- (a) a term in these terms and conditions;
- (b) a term in any Schedule; and
- (c) any term in any Ancillary Document or document incorporated by reference into this Agreement;

then the term falling into the category first appearing in the list above shall take precedence.

55 Independent Vendor Assessment Accreditation

- 55.1 The Supplier agrees to become fully accredited with MML's chosen Independent Vendor Assessment body and maintain such accreditation throughout the term of the Agreement
- 55.2 The Supplier will bear their own costs in respect to gaining and maintaining the required Independent Vendor Assessment accreditation
- 55.3 Failure to maintain accreditation will constitute a breach that must be remedied with 7 days of notification.
- 55.4 MML reserve the right to immediately and indefinitely deny access to any Client's Premises in the event of a Supplier failing to maintain accreditation, until such time as the accreditation re-established.

56 Computer Aided Facilities Management System (CAFM)

- 56.1 MML employ Computer Aided Facilities Management Systems (CAFM) to coordinate work, record work history, issue instructions, receipt Goods and Services and validate invoices
- 56.2 The Supplier will interact with the CAFM systems in the manner prescribed by MML, including but not limited to, receiving and acknowledging work orders, recording arrival on Premises, recording departure from Premises, completing risk assessments, accessing asbestos registers, upload certificates, certificates or photographs and submitting invoices
- 56.3 The CAFM system is used to record and calculate time on site. This measure is used to validate the Supplier's invoice, and the time billed is expected to match the time recorded on the CAFM system. Failure to accurately and appropriately use the CAFM system may result in delays in payment, additional means of verifying the time on Premises being requested, or even refusal to pay any portion of an invoice that cannot be validated.

In witness hereof, this Agreement has been entered into on the date stated at the beginning of it.

Signed by.....)
duly authorised for and)
on behalf of)
Maintenance Management Ltd) _____

Signed by.....)
duly authorised for and)
on behalf of)
[]) _____

Schedule 1 - Goods Specification

As indicated on each Work Order Number / contract specific

Schedule 2 - Services Specification

As indicated on each Work Order Number / contract specific

Schedule 3 - Charges for Goods and Services

Not Used/Contract specific

Schedule 4 - Service Levels and Key Performance Indicators

Not used/Contract specific

Schedule 5 - Service Credits

Not used/Contract specific

Schedule 6 - Cost Savings Initiatives or Gainshare

Not used/Contract specific

Schedule 7 - Contract Management

Contract Managers

1 Each Party will appoint a Contract Manager and, for periods when the Contract Manager is sick or on holidays, a deputy, who will be the single point of contact for the other Party for the overall management of this Agreement. The initial Contract Managers are:

MML: [**]

The Supplier: [**]

2 Each Party shall direct all notices and communications under this Agreement to the other Party's Contract Manager unless otherwise stated.

3 The Contract Manager will have the authority and be given the responsibility:

- (a) to represent the appointing Party in relation to this Agreement and make appropriate decisions on day to day issues;
- (b) to co-ordinate the technical aspects of the Services and liaise on the operational management of the Services including the review of the Service Levels;
- (c) to monitor the appointing Party's compliance with its obligations under this Agreement;
- (d) to give and receive notices under this Agreement; and
- (e) to exercise rights and give approvals under this Agreement.

4 Each Contract Manager shall have responsibility for ensuring the strategic and commercial objectives of this Agreement are achieved and for seeking to resolve issues. The initial Contract Managers are as set out above.

5 The Parties shall contact the relevant Contract Manager in relation to any procedures for management of this Agreement, liaison, review of the operation of this Agreement and referral of issues relating to this Agreement.

6 The Contract Managers shall discuss any recommendation for change to this Schedule and if following such discussion MML's Contract Manager confirms that recommendation in writing, that recommendation shall be implemented in accordance with the Service Levels.

7 Each Party shall:

- (a) be entitled to treat the other Party's Contract Manager or his respective deputy as the authorised representative of the other Party in respect of the matters referred to in Paragraph 3 of this Schedule 7 and as otherwise conferred on the Contract Manager under this Agreement;
- (b) ensure that its Contract Manager or his deputy is available for consultation with the other Party's Contract Manager or deputy at all reasonable times;
- (c) notify forthwith from time to time any change and planned change in its Contract Manager or deputy to the other Party's Contract Manager; and
- (d) liaise and co-operate and ensure that its Contract Manager and Staff shall liaise and co-operate with the other Party's Contract Manager and shall follow and comply with the contract management procedures set out in this Schedule.

8 Each Party shall:

- (a) ensure its Contract Manager or his deputy are the persons responsible for the overall provision of the Services and that they perform the responsibilities referred to in this Schedule;
- (b) obtain the prior written consent of each other's Contract Manager or his deputy before the appointment or replacement of the other's Contract Manager or his deputy;
- (c) ensure that satisfactory performance of the Services and the Service Levels actually achieved by each other are key elements of the personal performance review of each other's Contract Manager;
- (d) follow and comply with any reasonable instructions, directions or requests given or issued by each Party's Contract Manager in writing or given orally and subsequently confirmed in writing in connection with the performance of the Services; and
- (e) inform each other's Contract Manager promptly and in writing of any acts or omissions on the part of each other or its employees which prevent or hinder, or may prevent or hinder each other from meeting its obligations under this Contract.

Schedule 8 - Change Control Procedure

Part 1 - Contract Change Procedure

1 Principles

- (a) Where MML or the Supplier see the need for Change (which term includes modification) to this Agreement, MML may at any time request, and the Supplier may at any time recommend, such change and propose an amendment to this Agreement in accordance with this Change Control Procedure as set out in paragraph 2 of this Schedule 8.

2 Procedure

- (a) MML and the Supplier shall discuss Changes proposed by either Party and such discussions shall result in either:
 - (i) agreement not to proceed further; or
 - (ii) written request for a Change by MML; or
 - (iii) a recommendation for a Change by the Supplier.
- (b) Where a written request for a change is received from MML, the Supplier shall, unless otherwise agreed, submit a Change Control Note (CCN) to MML within 10 working days in the form attached to this Schedule.
- (c) A recommendation for a change by the Supplier shall be submitted as a CCN direct to MML at the time of such recommendation.
- (d) Each CCN shall contain:
 - (i) the title of the Change;
 - (ii) the originator and date of the request or recommendation for the Change;
 - (iii) the reason for the Change;
 - (iv) full details of the Change including any description, specifications, standards and facilities;
 - (v) the variation to the Charges, if any, resulting from such Change;
 - (vi) a timetable for implementation together with any proposals for testing the Change;
 - (vii) the impact, if any, of the Change on other aspects of this Agreement;
 - (viii) the date of expiry of validity of the CCN;
 - (ix) provision for signature by MML and by the Supplier.
- (e) For each CCN submitted, MML shall, within the period of the validity of the CCN:
 - (i) allocate a sequential number to the CCN;
 - (ii) evaluate the CCN and as appropriate either:
 - (aa) request further information, or

(bb) approve the CCN, or

(cc) notify the Supplier of the rejection of the CCN.

- 3 if the CCN is approved by MML, the Supplier shall arrange for a copy of an approved CCN (which shall be based on the form set out in Part 2 of this Schedule) to be signed by authorised representatives of each Party on behalf of MML and the Supplier.
- 4 If the Parties cannot agree to any issue under this Change Control Procedure, they may seek to resolve it in accordance with the disputes procedure set out in Clause 46.
- 5 Following the signature of a CCN by the Supplier and MML, this Agreement shall be amended to the extent necessary to give effect to that Change; and for this purpose, the Parties shall use the form of amendment set out in Part 3 of this Schedule. Unless and until such amendment is made in accordance with this paragraph 5 no such Change shall be considered effective and this Agreement shall not in any way be considered to have been amended.

Schedule 8 – Change Control procedure

Part 2 - Form of Change Control Note

Ref:

No:

Title of Change:

Date:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Price:

Originator:

Signed:.....

MML Response: Accept/Reject

Signed:.....

Schedule 8 – Change Control procedure

Part 3 – Form of Amendment

Amendment Number [] to the Agreement for provision of services**

Dated

Between

Maintenance Management Ltd

and

[]

This **Amendment** is made the [**] day of [**] between MML and [].

Whereas the Parties entered into an Agreement for provision of Services dated [**] (the **Original Agreement**) and now wish to amend the Original Agreement.

It is agreed as follows:

- 1 With effect from the [**] day of [**] the Original Agreement shall be amended as set out in Clause 4 hereof.
- 2 Save as herein amended all other terms and conditions of the Original Agreement shall remain in full force and effect.
- 3 The Parties acknowledge that there is good, valuable and sufficient consideration between them to ensure that this Amendment is valid, binding and enforceable by both Parties.
- 4 The amendments to the Original Agreement are as follows:

[insert amendments]

Signed by)
duly authorised for and)
on behalf of)
Maintenance Management Ltd) _____

Signed by)
duly authorised for and)
on behalf of)
[]) _____

Schedule 9 - Employment Particulars

1. Personal, Employment and Career

- (a) employees' terms of employment (including any contract, staff handbook or similar);
- (b) employee's date of birth;
- (c) employees' job title and grade;
- (d) employees' work location;
- (e) employees' hours of work;
- (f) employees' holiday entitlement and current holiday year entitlement and record;
- (g) any Working Time Regulation opt out forms relating to the Working Time Regulations 1998;
- (h) evidence of their continued right to work in the UK;
- (i) date of employees' start date and date of continuous employment;
- (j) details of any restrictive covenants affecting the employees, whether or not contained in their employment contracts; and
- (k) employees' notice period.

2. Working Arrangements

- (a) details relating to the working arrangements of employees, including the proportion of time that an employee spends working in connection with the Services (or some of them); and
- (b) such further information as MML may reasonably require in relation to working hours, employee groupings or working arrangements.

3. Pay and Benefits

- (a) employees' annual salary and if appropriate band/grade;
- (b) employees' entitlement to shift pay, unsociable hours or any other premium rates of pay;
- (c) any overtime payments applicable to the employees;
- (d) any allowances and bonuses applicable to the employees;
- (e) details of any outstanding loans, advances on salary or debts;
- (f) details of any pension schemes or pension payments applicable to the employees;
- (g) details of any other benefits available to the employees.

4. Collective Agreements

- (a) details of any collective agreements which affect the employees; and
- (b) details of any recognised unions, and the category of employee in which the union is recognised.

5. Medical and Insurance

- (a) details of employees' entitlement to sick pay and any other medical and/or insurance schemes including PHI, private health insurance, private medical insurance, and life assurance schemes; and
- (b) sickness and absence records for the immediately preceding 2 year period.

6. Disciplinary, Grievances and Legal Action

- (a) details of on-going disciplinary or performance reviews or action taken against the employee;
- (b) details of any grievance procedures affecting the employees;
- (c) details of any claims brought by the employees against the Supplier within the previous two years; and
- (d) details of any claims that the Supplier has reasonable grounds to believe an employee might bring against the Supplier relating to or arising out of employment with the Supplier.

Schedule 10 - Employees

7. Definitions and interpretation

7.1 In this Schedule:

"Early Retirement Benefits" means any benefits payable (or prospectively or contingently payable) to an Exiting Employee who is or was at any time a member of a pension scheme (whether in the form of a pension or lump sum, but excluding invalidity or survivors' benefits) before his or her normal retirement, whether from active or deferred status; and

"Employment Losses" means any costs, claims, demands, fines, or expenses (including legal and other professional expenses), payments, wages, actions, proceedings, compensation, awards, interest, loss, damages or penalties incurred and any liabilities for income tax to be collected through the Pay As You Earn Scheme and any primary and secondary National Insurance contributions;

"Exiting Employee" means an employee of the Supplier employed or engaged in providing the Services (or some of them) who transfers (or, if the context requires, will transfer) under a Relevant Transfer to a Successor or to MML;

"Exit Date" means the date or dates on which a Relevant Transfer occurs (or, if the context requires, will occur) under which an Exiting Employee transfers (or will transfer) to a Successor or to MML;

"Pre-Exit Period" means the period of six months before the Exit Date;

"Relevant Transfer" has the meaning assigned by TUPE;

"Successor" means a person who provides MML with services similar to the Services (or some of them) in succession to the Supplier whether following termination of this Agreement or otherwise;

"Supplier's Final Staff List" means the list of all the Supplier's Staff engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Exit Date;

"Supplier's Provisional Staff List" means a list prepared and updated by the Supplier of all the Supplier's Staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list;

"Transferred Early Retirement Liability" means any obligation of the Supplier (or the trustees of a pension scheme of which an Exiting Employee is or was at any time a member) in respect of a right, option or entitlement (including a prospective or contingent right, option or entitlement) which an Exiting Employee had before the Exit Date (or would have had but for an attempt by the Supplier or those trustees to change that right, option or entitlement in connection with a Relevant Transfer) to claim Early Retirement Benefits from the Supplier or those trustees.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced; and

"Unintended Exiting Employee" means a person employed or engaged by the Supplier (other than an Exiting Employee) who claims to have become an employee of MML or a Successor by reason of TUPE applying at the Exit Date.

7.2 References to MML include, if the context requires, any Affiliate. MML shall procure that each Affiliate complies with its obligations under this Schedule.

7.3 References to the Supplier include, if the context requires, any sub-contractor of the Supplier. The Supplier shall procure that each such sub-contractor complies with its obligations under this Schedule.

8. Application

MML and the Supplier understand that TUPE may apply upon termination of the Agreement or upon a Successor or MML otherwise starting to provide services similar to the Services (or some of them).

9. Transfer of the Exiting Employees to MML or a Successor

If TUPE applies upon termination of this Agreement or otherwise, MML and the Supplier agree that the contracts of employment of the Exiting Employees will have effect from the Exit Date as if originally made between MML or, as the case may be, a Successor, and the Exiting Employees.

10. Information regarding Exiting Employees

10.1 The Supplier agrees that, subject to compliance with the DP Regulations:

- (a) within 14 days of the earliest of:
 - (i) receipt of a notification from MML of a Relevant Transfer or intended Relevant Transfer;
 - (ii) receipt of the giving of notice of early termination of this agreement or any part thereof; or
 - (iii) the commencement of the Pre-Exit Period;it shall provide:
 - (i) the Supplier's Provisional Staff List;
 - (ii) the Employment Particulars in relation to all Staff listed on the Supplier's Provisional Staff List; and
 - (iii) details of any future changes to their terms and conditions already agreedto MML or, at the direction of MML, to a Successor;
- (b) at least 14 days before the Exit Date, the Supplier shall prepare and provide to MML and/or, at the direction of MML, to the Successor, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify all of the Supplier's Staff that are Exiting Employees. No Staff other than those listed on the Supplier's Final Staff List shall be Exiting Employees;
- (c) MML shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Employment Particulars for informing any tenderer or other prospective Successor for any services which are substantially the same type of services (or any part thereof) as the Services; and
- (d) on reasonable request by MML the Supplier shall provide MML or at the request of MML, the Successor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as MML reasonably requests.

10.2 If there is a material change to the information supplied to MML pursuant to paragraph 10.1, or if requested by MML, the Supplier will provide the new or revised information to MML (for itself or for a Successor) within the earlier of 14 days of the change occurring or the change being agreed. The Supplier will promptly notify MML or, at the direction of MML, the Successor of any notice to terminate employment received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

10.3 The Supplier warrants that the Employment Particulars, the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information will be true and accurate in all material respects.

11. Changes before the Exit Date

- 11.1 During the Pre-Exit Period, the Supplier will not unless with MML's prior written consent (which will not be unreasonably withheld or delayed):
- (a) terminate the employment of any person working in connection with the Services;
 - (b) assign any person working in connection with the Services to work unconnected with the Services;
 - (c) assign any person working unconnected to the Services to work in connection with the Services, whether to replace a person who has stopped working in connection with the Services or otherwise;
 - (d) vary or promise to vary the terms of employment of any person working in connection with the Services (other than pay increases not exceeding 3% in the ordinary course of business);
 - (e) increase or decrease the numbers of persons that would transfer under TUPE to MML or to a Successor under TUPE; or
 - (f) employ any person in connection with the Services (including a person assigned to work in connection with the Services) other than in the ordinary course of business and on the Supplier's usual terms for the position held.

12. Apportionment of salary and other benefits

- 12.1 The Supplier will be responsible for the payment of salary and other payments (including payments in connection with provision of benefits) which are payable to or in respect of any Exiting Employee up to and on the Exit Date. Accordingly, MML will (and will procure that a Successor will) reimburse the Supplier for any payment made by the Supplier which is referable to a period after the Exit Date.
- 12.2 MML, or as the case may be, a Successor, will be responsible for the payment of salary and other payments (including payments in connection with provision of benefits) which are payable to or in respect of any Exiting Employee after the Exit Date. Accordingly, the Supplier will reimburse MML or, as the case may be, a Successor, for any payment made by MML or a Successor which is referable to a period on or before the Exit Date.
- 12.3 To the extent that any Exiting Employee:
- (a) has not taken holiday that has accrued on or before the Exit Date ("untaken holiday"); or
 - (b) has taken holiday on or before the Exit Date that has not accrued ("holiday in advance");
- the parties shall reimburse each other such that the Supplier bears the cost of holiday pay referable to untaken holiday and MML (or, as the case may be, a Successor) bears the cost of holiday pay referable to holiday in advance. The cost of holiday pay will be based on pay-rates applicable at the Exit Date.
- 12.4 Reimbursements under this paragraph 12 will be made within 21 days of receipt of a written request setting out details of the reimbursement claimed with an explanation of the basis on which it is claimed.
- 12.5 References in this paragraph 12 to salaries, benefits and other payments will, if appropriate, include the cost of employer's National Insurance contributions.

13. Consultation

- 13.1 The Supplier will, and MML will (and, if relevant will procure that a Successor will), promptly and in a co-operative and helpful manner comply with any respective obligations under TUPE relating to

provision of information and consultation and, for the purposes of consultation (whether under TUPE or otherwise):

- (a) MML or a Successor, if requested by the Supplier on reasonable notice, shall send a senior representative of its staff to at least one consultation meeting;
- (b) the Supplier, if requested by MML or a Successor on reasonable notice, shall permit MML and a Successor to send a senior representative to at least one consultation meeting; and
- (c) the Supplier shall permit MML and a Successor to consult the Exiting Employees regarding employment and associated matters following the Exit Date.

13.2 The Supplier shall, to the extent permitted by Law, deliver to MML or the Successor on (or within 14 working days of) the Exit Date all those records relating to the Exiting Employees which are in the Supplier or its Group's possession or under its or their control on that date including, without limitation, all PAYE coding notices and other records that might facilitate a smooth transfer of the Exiting Employees from the Supplier to MML or the Successor.

14. Protection of MML and Successor

The Supplier will indemnify MML and a Successor against all Employment Losses which MML or the Successor may incur on account of or arising from:

- (a) any claim by an Exiting Employee in respect of any fact or matter to the extent that such claim concerns or arises from employment on or before the Exit Date;
- (b) any claim by any person (other than an Exiting Employee) in respect of which MML or a Successor incurs liability as a result of the operation or alleged operation of TUPE;
- (c) any claim arising from the failure by the Supplier or a sub-contractor of the Supplier to comply with information and consultation obligations under TUPE (except to the extent that compliance is not reasonably practicable as a result of non-compliance by MML or a Successor with regulation 13(4) of TUPE (information on measures)); and
- (d) any claim made by or on behalf of an Exiting Employee in respect of a Transferred Early Retirement Liability.

15. Protection of Supplier

MML will indemnify the Supplier against all Employment Losses which the Supplier may incur on account of or arising from:

- (a) any claim by an Exiting Employee in respect of any fact or matter to the extent that such claim concerns or arises from employment by MML or a Successor after the Exit Date; and
- (b) any claim arising from non-compliance by MML or a Successor with regulation 13(4) of TUPE (information on measures).

16. Unintended Exiting Employee

16.1 This paragraph applies to any Unintended Exiting Employee.

16.2 If there is an Unintended Exiting Employee, the parties will notify each other promptly upon becoming aware of his claim.

16.3 MML or a Successor may terminate (or purport to terminate) the contract of employment of the Unintended Exiting Employee at any time within 14 days (or such longer period as the Supplier and MML or a Successor agree) of MML or a Successor becoming aware of his or her claim.

16.4 The Supplier will indemnify MML and a Successor against all Employment Losses which MML and a Successor may incur on account of or arising from:

- (a) terminating (or purporting to terminate) the employment of any Unintended Exiting Employee;
- (b) the employment of any Unintended Exiting Employee;
- (c) any claim by any person (including an Unintended Exiting Employee) or by an employee representative, in respect of which MML or a Successor incurs or is alleged to incur responsibility or liability as a result of the operation of TUPE.

17. Post-transfer severance costs

17.1 If, at any time within 3 months of the Exit Date, MML or a Successor makes any Exiting Employee redundant, the Supplier shall reimburse the referable severance costs.

17.2 In relation to any Exiting Employee, "severance costs" shall mean any payments referable to termination including statutory redundancy pay, any enhanced redundancy payment, any payment made as compensation for failure to give (or in lieu of) notice of termination, and any payment due in respect of a finding of unfair dismissal, but excluding any payment referable to acts or omissions of MML or a Successor or an employee or agent of MML or a Successor and which are contrary to or giving rise to liability under the Equality Act 2010.

Schedule 11 - Benchmarking

Not used/Contract specific

Schedule 12 - Guarantee

Not used

Schedule 13 - Basis of Charging

Unless otherwise agreed in writing, all works will be charged for in the following way:

Reactive Works

£500 Reactive Spend Limit: All reactive attendances carry with them a £500 spend limit, this is inclusive of all charges including but not limited to, Arrival Fee, time on site, parts and labour. Should the work required in order to repair/rectify any reactive fault exceed this amount, the Supplier must seek authorisation from MML prior to completing work. Authorisation should be requested in the form of an estimate/quotation however approval may be obtained immediately if the work is deemed urgent (affecting health & safety or trade) by contacting the MML Customer Experience Helpdesk. Any charges above the £500 spend limit which are not accompanied by a valid MML work order number and authorisation will not be processed for payment.

Time and Material: Reactive works will be valued on a time and material basis at rates as scheduled in the Supplier's form of tender.

Arrival Fee: The appropriate arrival fee will be paid once only per order, and will include all travelling, transport, parking, tolls, and congestion charges where applicable. One arrival fee will be paid irrespective of the number of engineers attending site and/or the number of visits. Where multiple orders are attended to at the same site on the same day and at the same time, only one arrival fee per day/site will be paid.

Unless out of hours attendance is specifically agreed/requested, all arrival fees and hourly rates will be paid at in hours rates. Where attendance on site crosses between in hours and out of hours the hourly rate will be adjusted accordingly for the remaining portion of time on site.

Hourly Rates: The hourly rates will be paid for hours on site only and the Supplier shall indicate his arrival and departure times on the Client Specific Work Record Sheet and his job/work sheet. Time spent off site collecting materials or plant will be paid up to a maximum of one additional hour where it can be demonstrated that it was in the best interest of the client. Where previously agreed Suppliers may charge for time incurred on their own premises. All time will be paid in fifteen-minute increments. The hourly rate charged must correspond to the previously agreed hourly rates.

Two Man Teams: The Supplier will only be paid for two or more operatives attending site for works that either require additional resources due to health and safety (including but not limited to working at height, hot works, or working in confined spaces) or is so instructed or agreed by MML.

Materials: Parts lists inclusive of pre agreed mark-up are to be submitted and authorised for all commonly used parts in advance and any such parts should be invoiced in accordance with the authorised parts list. In the absence of an authorised parts list all materials will be paid at net cost price plus the agreed mark up. Copy purchase invoices must be submitted to MML where any individual part is greater than £100 or where otherwise requested by MML to verify claims made by the Supplier. Unless otherwise agreed in writing, the maximum allowable mark-up will be 10%. All sundry materials and sundry fixings shall be provided by the Supplier without charge and shall be deemed to be within the hourly rate for the operative. Delivery charges will be reimbursed where reasonable and exclusive of any additional mark-up.

Plant/Equipment: Plant/equipment lists inclusive of pre agreed mark-up are to be submitted and authorised for all commonly used plant/equipment in advance and any such plant/equipment should be invoiced in accordance with the authorised plant/equipment list. In the absence of an authorised plant/equipment list, all plant/equipment will be paid at net cost price plus the agreed mark up. Copy purchase invoices must be submitted to MML where any individual part is greater than £100 or where otherwise requested by MML to verify claims made by the Supplier. Unless otherwise agreed in writing, the maximum allowable mark-up will be 10%. Hand tools, hand power tools, consumable tools e.g. drill bits and cutting disks, steps, ladders and the like shall be provided by the Supplier without charge and shall be deemed to be within the hourly rate for the operative.

Sub-contractors: In accordance with section 32 (V16 of the MML Supply of Goods and Services Agreement), the Supplier may only use pre-approved Sub-contractors. It should be noted that the

Supplier will only be entitled to claim the Arrival fee and hours spent on site at the Supplier's agreed hourly rates.

Specialist Sub-contractors: MML may instruct the Supplier to employ a specialist Sub-contractor, or agree that a specialist Sub-contractor is required, for which the Supplier will be paid net cost plus the agreed mark up, to a maximum mark up of £250 per job unless otherwise agreed in writing. Copies of the specialist Sub-contractor's invoices must be submitted to MML to verify claims made by the Supplier.

Abortive Visit: Payment for abortive visits shall be at the appropriate Arrival fee only and shall be conditional upon the correct procedure being followed for arranging and confirming attendance. Time on site will not be paid. Where possible, the Supplier will provide a job sheet signed by the unit manager or his/her deputy with the reason why the call was aborted on application for payment.

Recalls: A Supplier may be asked to re attend a site within 14 days of a previous repair if a fault reoccurs, exhibiting the same symptoms as before. Such attendance will not be subject to any charge for Arrival fee or labour. Where it is identified that the fault is not the same as the fault previously diagnosed, the Supplier should notify the MML Customer Experience Helpdesk at the time of attendance and a new Work Order Number will be issued. Any subsequent invoices should quote the new Work Order Number and can include an Arrival fee and the appropriate labour.

Quoted Works

Fixed Cost vs Estimate: All quotations are submitted as estimates and are paid for on a time and materials basis. In certain circumstances and at the discretion of MML, a quotation may be accepted on a fixed cost basis. For the avoidance of doubt all quotations are to be considered estimates in line with the below unless specifically agreed otherwise.

Abortive Visit Payment for abortive visits shall be at the appropriate Arrival fee only and shall be conditional upon the correct procedure being followed for arranging and confirming attendance. Time on site will not be paid. Where possible, the Supplier will provide a job sheet signed by the unit manager or his/her deputy with the reason why the call was aborted on application for payment.

Quote Preparation

Quote Following Reactive Job, PPM or Quotes Requested by MML: No arrival fee, travel time or mileage will be chargeable in connection with the preparation of the quotation.

Quote Breakdown and Specification: (materials, plant/equipment, arrival fee and time on site): The Supplier must provide a sufficient level of detail including a full breakdown of costs with supporting photographs. Quotations must be submitted on the MML Quote Form.

Hourly Rates: The estimated time on site and the hourly rates will be shown on the quotation/estimate form however time on site will only be paid in accordance with the amount of time actually employed and as reinforced by the signed Work Record Sheet or CAFM system.

Materials: The estimated materials required will be shown on the quotation/estimate form however materials will only be paid in accordance with those actually used and as reinforced by the signed Work Record Sheet. Parts lists inclusive of pre agreed mark-up are to be submitted and authorised for all commonly used parts in advance and any such parts should be invoiced in accordance with the authorised parts list. In the absence of an authorised parts list all materials will be paid at net cost price plus the agreed mark up. Copy purchase invoices must be submitted to MML where any individual part is greater than £100 or where otherwise requested by MML to verify claims made by the Supplier. Unless otherwise agreed in writing, the maximum allowable mark-up will be 10%. All sundry materials and sundry fixings shall be provided by the Supplier without charge and shall be deemed to be within the hourly rate for the operative. Delivery charges will be reimbursed where reasonable and exclusive of any additional mark-up.

Plant/equipment: The estimated plant/equipment required will be shown on the quotation/estimate form however plant/equipment will only be paid in accordance with those actually used and as reinforced by the signed Work Record Sheet. Plant/equipment lists inclusive of pre agreed mark-up are to be submitted and authorised for all commonly used plant/equipment in advance and any such plant/equipment should be invoiced in accordance with the authorised plant/equipment list. In the

absence of an authorised plant/equipment list, all plant/equipment will be paid at net cost price plus the agreed mark up. Copy purchase invoices must be submitted to MML where any individual part is greater than £100 or where otherwise requested by MML to verify claims made by the Supplier. Unless otherwise agreed in writing, the maximum allowable mark-up will be 10%. Hand tools, hand power tools, consumable tools e.g. drill bits and cutting disks, steps, ladders and the like shall be provided by the Supplier without charge and shall be deemed to be within the hourly rate for the operative.

Sub-contractors: In accordance with section 32 (V16 of the MML Supply of Goods and Services Agreement), the Supplier may only use pre-approved Sub-contractors. It should be noted that the Supplier will only be entitled to claim the Arrival fee and hours spent on site at the Supplier's agreed hourly rates.

Specialist Sub-contractors: MML may instruct the Supplier to employ a specialist Sub-contractor, or agree that a specialist Sub-contractor is required, for which the Supplier will be paid net cost plus the agreed mark up, to a maximum mark up of £250 per job unless otherwise agreed in writing. Copies of the specialist Sub-contractor's invoices must be submitted to MML to verify claims made by the Supplier.

PPMs

PPM Charges: All PPMs will be paid at the agreed rates on completion of the PPM

£200 Additional Spend Limit: Unless otherwise agreed in writing, all PPM attendances carry with them a £200 spend limit for any minor repairs that are identified at the time of the PPM and can be affected without leaving site. Should the work required in order to repair/rectify any identified fault exceed this amount, the Supplier must seek authorisation from MML prior to completing work. Authorisation should be requested in the form of a quotation however approval may be obtained immediately if the work is deemed urgent (affecting health & safety or trade) by contacting the MML Customer Experience Helpdesk. Any charges above the £200 spend limit which are not accompanied by a valid MML work order number and authorisation will not be processed for payment.