



SA GROUP

G-Cloud 10

Terms and Conditions

2018





## 1 INTERPRETATION

1.1 In these terms and conditions:

"Background Intellectual Property" means the Intellectual Property owned or controlled by either Party existing at the date of the Contract or generated other than through the performance of the Services and which is used for the provision of the Services;

"Charges" means the charges made by SA Group Ltd for the provision of the Services;

"Contract" means the written agreement concluded between SA Group Ltd and the Customer, including all specifications, plans, drawings and other documents that are expressly incorporated into it and incorporating these terms and conditions;

"Customer" means the party who purchases or agrees to purchase the Services; "Customer Resources" has the meaning given in Clause 4.1;

"Deliverables" means either (i) any documents, goods, articles or other materials, and any data or other information which are stated in the Contract to be provided by SA Group Ltd to the Customer and resulting from the performance of the Services; or (ii) in the absence of such a statement in the Contract, a final report which shall include relevant information arising from the performance of the Services;

"Foreground Intellectual Property" means Intellectual Property arising out of the performance of any work by SA Group Ltd and/or Customer under the Contract (but for the avoidance of doubt excluding Background Intellectual Property);

"Intellectual Property" means all patents, utility models, trademarks, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; semi-conductor topography rights; database rights; rights protecting goodwill and reputation; know-how; inventions, secret formulae and processes; other confidential information and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world;

"Party" means either of SA Group Ltd and the Customer as applicable, together being the "Parties";

"Proprietary Information" means trade secrets, and all other information of a confidential or proprietary nature including but not limited to any and all technical information, data, drawings, process information and know-how and embracing reports, computer software (whether in object or source code) and designs and any information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs, reports, recommendations, advice or tests and development plans, and in whatever form whether in writing, given orally or contained in an electronic format, and which is either marked as confidential (or with some similar legend) or otherwise clearly intended to be confidential;

"SA Group Ltd" means SA Group Ltd (registered in England and Wales number 06866343) having its registered office at: Heywood House, Westbury, Wiltshire, BA13 4NA

"Services" means the programme of work to be performed by SA Group Ltd as detailed in the Contract.

1.2 In the Contract references to (i) any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; (ii) the masculine include the feminine and the neuter and vice versa; (iii) the



singular include the plural and vice versa; and (iv) to Clauses are references to the clauses set out in these terms and conditions. The headings to these terms and conditions will not affect their interpretation.

## **2 APPLICATION OF TERMS**

2.1 These terms and conditions are the only terms upon which SA Group Ltd is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 Each order by the Customer for the supply of Services from SA Group Ltd shall be deemed to be an offer by the Customer to purchase Services subject to these terms and conditions.

## **3 SUPPLY OF SERVICES AND DELIVERY**

3.1 SA Group Ltd shall: (i) perform the Services; and (ii) provide the Deliverables. Unless otherwise stated in the Contract, Deliverables shall be delivered by SA Group Ltd at place of business where the Services are performed.

3.2 The Customer shall be responsible for providing all appropriate instructions, documents, licences or authorisations in a timely manner to enable SA Group Ltd to deliver the Deliverables.

3.3 If for any reason the Customer does not accept delivery of any Deliverables when they are ready for delivery, then SA Group Ltd may store the Deliverables and the Customer shall pay SA Group Ltd its reasonable charges in respect of such storage. In the event that such Deliverables have not been collected by the Customer within ten (10) days from receipt of notification from SA Group Ltd, SA Group Ltd may dispose of such Deliverables at Customer's expense.

3.4 The Customer shall notify SA Group Ltd in writing of any damage to Deliverables or shortfall in quantity as soon as practicable but not later than five (5) days after delivery. In such circumstances the remedies provided in Clause 10.4 shall apply.

## **4 CUSTOMER RESOURCES**

4.1 The Customer will make available free of charge and risk to SA Group Ltd at the times stated in the Contract or otherwise in a timely manner all necessary personnel, materials, equipment and resources ("Customer Resources") reasonably required by SA Group Ltd to carry out the Services, and (to the extent applicable) the Customer shall, at its expense, remove such Customer Resources which are at SA Group Ltd's premises and which have not been incorporated into the Deliverables, at the expiry or earlier on termination of the Contract.

4.2 The Customer represents and warrants that it has the full right, authority and licence to enter into this Contract and to supply and disclose the Customer Resources and that any Customer Resource and its use by SA Group Ltd for the purpose of providing the Services will not infringe the copyright or other intellectual property rights of any third party.

4.3 In the event of any failure or delay on the part of the Customer to supply such Customer Resources, or if the same are not in accordance with this Contract or are not fit for the purpose provided, then SA Group Ltd shall within a reasonable time notify the Customer of any defect or delay, including particulars of the same and the Customer shall as soon as reasonably practicable and at its own expense supply replacement Customer Resources or make good such defect. In such circumstances, SA Group Ltd may: (i) extend the period for performance of the Services by a reasonable time; and/or (ii) adjust the Charges to meet any additional expenditure incurred by SA Group Ltd as a result of any defect or delay (treating any delay as a Customer rescheduling in accordance with Clause 11.2) and the

Customer shall pay such additional Charges; and/or (iii) serve notice under Clause 16.1.1; and/or (iv) terminate the Contract forthwith.

## **5 PRICE AND PAYMENT TERMS**

### **5.1 INTENTIONALLY DELETED**

### **5.2 INTENTIONALLY DELETED**

5.3 Upon receipt of an SA Group Ltd invoice for Services provided, the customer shall pay SA Group Ltd by BACS or Bank Transfer the full invoice amount within 30 days of the invoice date. As annotated on the invoice, failure to do so will result in clause 5.6 being invoked.

5.4 Unless otherwise stated in the Contract, the Charges are exclusive of any Value Added Tax, sales tax or similar, and any taxes, duties or imposts chargeable thereon all of which shall be payable by the Customer as an additional charge. All payments due from the Customer shall be made without deduction of any set-offs, taxes, charges and other duties (including any withholding or income taxes).

5.5 If the Customer disputes any invoice or part thereof, the Customer shall immediately notify SA Group Ltd in writing of the reasons therefore. The Customer shall immediately pay the undisputed portion of the invoice and the Parties shall seek to resolve the dispute within 14 days, and in the absence of a resolution the provisions of Clause 20 (Dispute Resolution) shall apply. Upon resolution of the dispute, such sum as is agreed by the Parties as payable shall be paid immediately to SA Group Ltd, together with any interest due under Clause 5.6.

5.6 If the Customer fails to pay SA Group Ltd any sum due pursuant to the Contract, the Customer in accordance with Late Payment of Commercial Debts (Interest) Act 1998 will be liable to pay interest at 8% above the Bank of England base rate to SA Group Ltd on such sums from the due date, whether before or after any judgement.

5.7 Whenever under the Contract any sum of money shall be recoverable from or payable by the Customer, SA Group Ltd may deduct the same from any sum then due to the Customer under the Contract or any other contract between SA Group Ltd and the Customer.

## **6 INTELLECTUAL PROPERTY RIGHTS**

6.1 Ownership of Background Intellectual Property shall remain unaffected by this Contract.

6.2 Ownership of any and all Foreground Intellectual Property shall vest exclusively in SA Group Ltd and/or its contractors.

6.3 On delivery of the Deliverables and receipt by SA Group Ltd from the Customer of the Charges, SA Group Ltd shall grant to the Customer a non-exclusive, royalty-free right and licence to use the Intellectual Property in the Deliverables solely for the purposes expressly stated in the Contract as being the purposes for which the Deliverables are supplied or, if no such purpose is stated, solely for the purposes of its internal testing and evaluation of the Deliverables (not involving their commercial use or disclosure to any third party).

6.4 The Customer shall at SA Group Ltd's request (and shall procure that its employees, agents or officers) carry out all reasonable acts (including prompt signature of documents) necessary to vest ownership of Foreground Intellectual Property in accordance with this Clause 6.

6.5 The Customer undertakes not itself, nor to assist or authorise or purport to authorise any third party to reverse-engineer, de-compile, copy or reproduce all or any part of the Deliverables nor seek or attempt to do so or to

otherwise gain access to any Proprietary Information contained or incorporated in the Deliverables nor to use the same and/or any Intellectual Property in the Deliverables for any purpose outside the scope of the licence granted to it by Clause 6.3.

## **7 RISK AND TITLE**

7.1 The Deliverables shall be at the risk of the Customer from the time of delivery in accordance with Clause 3.

7.2 Subject to Clause 7.3 ownership of any and all documents, drawings, designs information, data, software, databases, information and/or Deliverables (and any copies thereof) produced under the Contract shall vest exclusively in SA Group Ltd and, upon request from SA Group Ltd, the Customer shall return the same to SA Group Ltd and not retain any copies.

7.3 Where the Contract states that ownership of any Deliverable shall pass to the Customer, such ownership shall not pass until SA Group Ltd has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Services; and (ii) all other sums which are or which become due to SA Group Ltd from the Customer under the Contract. For the avoidance of doubt any such transfer of ownership of a Deliverable shall not imply transfer of ownership of any Intellectual Property therein and the Customer's sole and entire rights in and to any such Intellectual Property shall be and remain exclusively those arising under Clause 6.3, notwithstanding any such transfer of ownership of a Deliverable.

7.4 SA Group Ltd shall be entitled to recover payment for the Services notwithstanding that ownership of any Deliverables have not passed to the Customer.

7.5 Prior to ownership of any Deliverables passing to the Customer, the Customer grants SA Group Ltd, its agents and employees an irrevocable licence at any time to enter any premises, on reasonable notice, where such Deliverables are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

## **8 SA GROUP LTD'S PERSONNEL**

8.1 The Customer undertakes during the term of the Contract and for 12 months after completion or earlier determination of the Contract not to solicit or make an offer of employment (or an offer for services) to any SA Group Ltd employee, officer or agent engaged in performance of the Services.

## **9 WORK PERFORMED ON SA GROUP LTD'S OR CUSTOMER'S PREMISES**

9.1 The Customer's employees, agents and representatives shall abide by such regulations, including security and health and safety regulations, as are applicable to their presence on SA Group Ltd's premises. A copy of those regulations will be available from SA Group Ltd on demand.

9.2 SA Group Ltd shall have the right to require the removal from its premises of anyone disobeying such regulations and reserves the right to refuse entry to its premises to any person whom it considers unsuitable.

9.3 Where the Contract requires SA Group Ltd to perform Services at the Customer's premises, the Customer shall be responsible for arranging, in good time and at its own expense, all permits, licences or other permissions necessary to enable SA Group Ltd's employees, agents and representatives to gain access to, and perform the Services at, such premises. SA Group Ltd's employees, agents and representatives working on the Customer's premises shall abide by such regulations detailed in the Contract as are applicable to their presence on the Customer's premises.

## **10 WARRANTY AND EXCLUSIVE REMEDY**



10.1 SA Group Ltd warrants that it shall use reasonable skill and care in performance of the Services, but makes no warranty that all or any of the Deliverables will be suitable to enable the Customer to achieve any particular purpose even when such purpose has been notified to SA Group Ltd.

10.2 SA Group Ltd makes no warranty that all or any of the Deliverables will not infringe the rights of any third party.

10.3 SA Group Ltd makes no warranty and accepts no liability for the use made of all or any of the Deliverables by the Customer or by any third party who has obtained such Deliverables directly or indirectly from the Customer and the Customer hereby indemnifies SA Group Ltd from and against any claims against SA Group Ltd arising from or relating to any use of the Deliverables.

10.4 Subject to Clause 10.5 below, if any defect or fault is found to exist in the Deliverables resulting from the performance of the Services not in conformance with the warranty in Clause 10.1, SA Group Ltd shall at its option either (i) re-perform the relevant Services or part thereof; and/or repair or replace any Deliverables (or the defective part) or (ii) refund such proportion of the Charges paid to SA Group Ltd by the Customer for the Services as is reasonable, PROVIDED THAT, if SA Group Ltd so requests, the Customer shall, at the Customer's expense, return any Deliverables or the part which is defective to SA Group Ltd.

10.5 SA Group Ltd shall have no liability of any kind for breach of its warranty in Clause 10.1 in circumstances where:

10.5.1 the Customer fails to give written notice of the alleged breach to SA Group Ltd within ten (10) days of the time when the Customer discovers or ought to have discovered it and in any event within three (3) months of delivery of the affected Services or Deliverable or, having given such notice:

10.5.1.1 fails to give SA Group Ltd a reasonable opportunity to examine any such Deliverables concerned; or

10.5.1.2 fails (having been asked to do so by SA Group Ltd) to return, at the Customer's cost, such Deliverables for examination at SA Group Ltd's place of business; or

10.5.1.3 continues to make full or substantially full use of such Services or Deliverables; or

10.5.2 the defect arises as a result of: (i) defects in any Customer Resources; or (ii) the Customer failing to follow SA Group Ltd's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Deliverables or (if there are none) good trade practice; or (iii) the Customer altering or repairing any Deliverables without the prior written consent of SA Group Ltd; or

10.5.3 any sums remain due and outstanding under the Contract at the date of receipt by SA Group Ltd of the notice referred to in Clause 10.5.1.

10.6 Where SA Group Ltd supplies, in connection with the provision of the Services, any goods supplied by a third party, SA Group Ltd does not give any warranty, guarantee or assurance of any kind as to their quality, fitness for purpose or otherwise, but shall, where reasonably possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the party supplying the goods to SA Group Ltd.

10.7 THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT THE WARRANTIES AT CLAUSE 10.1 AND ASSOCIATED REMEDIES AT CLAUSE 10.4 ARE ITS SOLE AND ENTIRE WARRANTIES AND REMEDIES IN CONNECTION WITH THE PERFORMANCE BY SA GROUP LTD OF THE SERVICES UNDER THIS CONTRACT. ALL OTHER REPRESENTATIONS AND WARRANTIES WHICH MAY OTHERWISE BE IMPLIED (BY STATUTE OR OTHERWISE) IN RELATION TO THE SERVICES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

## 11 DELAYS IN DELIVERY, CUSTOMER CANCELLATION AND RESCHEDULING

11.1 SA Group Ltd shall use its reasonable endeavours to achieve any dates agreed for delivery, but shall be under no liability for any failure to achieve such dates.

11.2 Subject to Clause 11.3, the Customer may at any time prior to the performance of the Services under the Contract, by notice in writing cancel or reschedule all or some of the Services.

11.3 The Customer acknowledges that cancellation or rescheduling of the Services at short notice would make reallocation of SA Group Ltd's committed resources to alternative tasks impractical, as a result of which SA Group Ltd would suffer financial loss. Accordingly the Customer agrees that, for any notice of cancellation or rescheduling received by SA Group Ltd prior to the scheduled commencement of the Services, SA Group Ltd shall have the right to charge a percentage of the Charges for the cancelled or rescheduled Services in accordance with the following table:

<b>Table 11.3 - % of Charges for cancelled or rescheduled Services that SA Group Ltd are entitled to charge in respect to the number of days notice given.</b>	
No. working days notice	% of charge for cancelled or rescheduled Services
≥ 28	0%
≥10 but ≤28	10%
9	20%
8	30%
7	40%
6	50%
5	60%
4	70%
3	80%
2	90%
1, or on the scheduled day	100%

11.4 On receipt of any notice given in accordance with this Clause 11, SA Group Ltd shall cease and/or reschedule performance of the cancelled Services as soon as reasonably practicable.

## 12 LIMITATION OF LIABILITY



12.1 The following provisions set out the entire financial liability of SA Group Ltd (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer arising under or in connection with the Contract in respect of:

12.1.1 any breach of the Contract; and

12.1.2 any representation, statement or tortious act or omission including negligence.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in the Contract shall exclude or limit the liability of SA Group Ltd for;

12.3.1 death or personal injury caused by SA Group Ltd's negligence; or

12.3.2 fraud committed by SA Group Ltd (including fraudulent misrepresentation); or

12.3.3 any other matter which it would be illegal, or in breach of any statutory provision, for SA Group Ltd to exclude or attempt to exclude its liability for.

12.4 Subject to Clause 12.3, SA Group Ltd's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Charges payable under the Contract pursuant to Clause 5.

12.5 Subject to Clause 12.3, SA Group Ltd shall not be liable to the Customer for: (i) any, indirect, special or consequential loss, damage, costs, expenses or other claims whatsoever; or (ii) any economic loss (including loss of profit, loss of business, depletion of goodwill or like loss); or (iii) any loss, damage or liability to the extent caused by the negligence, wilful misconduct or other fault of the Customer, its employees, agents or contractors or a breach by the Customer of this Contract; in each case howsoever caused, including without limitation negligence or breach of statutory duty or misrepresentation, arising out of or in connection with the Contract.

## 13 DESCRIPTION

13.1 Except to the extent that they form part of the specification set out in the Contract, all drawings, descriptive matter, specifications and advertising issued by SA Group Ltd and any descriptions or illustrations contained in SA Group Ltd's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the matters described in them and will not form part of this Contract.

## 14 SAFETY

14.1 The Customer shall, in accordance with statutory health and safety requirements, provide prior written notice to SA Group Ltd of any health or safety hazards associated with any Customer Resources and/or Customer facilities used by SA Group Ltd in the performance of the Services.

14.2 SA Group Ltd reserves the right to inspect any Customer Resources which Customer wishes to deliver to any SA Group Ltd premises and to refuse them entry if SA Group Ltd considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property.

14.3 The Customer shall meet any reasonable costs incurred by SA Group Ltd resulting from the rejection of such Customer Resources by SA Group Ltd and SA Group Ltd shall not be liable for any costs or delays to the Contract resulting from any decision under this Clause.





14.4 SA Group Ltd may at any time make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services. SA Group Ltd shall within a reasonable time notify the Customer that such changes have been made. In the event that changes are made to the Services resulting from safety or other statutory requirements which become effective after the date of this Contract, then the reasonable charges associated with such change shall be to the Customer's account and SA Group Ltd shall be entitled to a reasonable extension of time for performance of the Services.

## 15 COMMERCIAL CONFIDENTIALITY

15.1 Without prejudice to the rights of either Party arising elsewhere in the Contract, all Proprietary Information exchanged between the Customer and SA Group Ltd (including that contained in any Customer Resources and Deliverables) shall be treated as commercially confidential in accordance with this Clause.

15.2 Neither Party shall use, disclose or knowingly permit to be disclosed to any person (except those employees, agents or sub- contractors who need to know the information for the purposes of the Contract) any Proprietary Information of the other Party without the prior written consent of the other Party and both Parties shall ensure that such employees, agents or sub- contractors are subject to like obligations of confidentiality as bind the Parties.

15.3 The obligations of confidentiality owed by one Party to the other set out in this Clause shall remain in force despite the completion (or earlier determination) of the Contract but shall not apply to information which:

15.3.1 is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations under this Agreement);

15.3.2 is known without restriction to the receiving Party at the time of disclosure without breach of any obligation of confidentiality;

15.3.3 becomes known to the receiving Party without restriction from an independent source having the right to convey it;

15.3.4 is shown to the reasonable satisfaction of the originating Party to have been generated independently by the receiving Party;

15.4 Nothing herein shall prevent the disclosure of information by the receiving Party to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is subject or pursuant to any order of court or other competent authority or tribunal PROVIDED THAT:

15.4.1 the receiving Party first gives the other Party, where possible, the opportunity to make and/or manage the necessary disclosure;

15.4.2 where the receiving Party is required to make the disclosure itself, the disclosure made is the minimum required (having regard to all possible exemptions from disclosure) and is made under maximum possible constraints of confidentiality; and

15.4.3 the other Party is provided with full information on the intended disclosure and is fully consulted.

15.5 This Clause shall not apply to the disclosure of any Proprietary Information contained in any Deliverables to the extent that such disclosure is reasonably necessary for the exercise by the Customer of the right referred to in Clause 6.3.



15.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause and that (without prejudice to any other rights or remedies that the Parties may be entitled to as a matter of law), both Parties will be entitled to the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Clause and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause.

## 16 TERMINATION FOR BREACH

16.1 Without prejudice to any rights of action or remedy which have accrued or shall accrue, either Party (the "Terminating Party") may at any time by written notice (see Clause 22) terminate the Contract if;

16.1.1 the other Party is in breach of any material obligation under the Contract and if the breach is capable of remedy, the other Party has failed to remedy such breach within thirty (30) days of written notice to that Party requiring remediation of the breach; or

16.1.2 any distress, execution or other process is levied upon any of the assets of the other Party; or

16.1.3 the other Party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party's undertaking or assets; or

16.1.4 the other Party ceases or threatens to cease to carry on its business; or

16.1.5 the financial position of the other Party deteriorates to such an extent that in the opinion of the Terminating Party the capability of the other Party adequately to fulfil its obligations under the Contract has been placed in jeopardy.

16.2 Where SA Group Ltd terminates the Contract under this Clause, the Customer shall within seven (7) days' pay to SA Group Ltd: (i) all outstanding payments invoiced by SA Group Ltd under the Contract at the date of termination; (ii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination; (iii) all costs (including overheads) and liabilities incurred by SA Group Ltd arising out of or resulting from termination, including but not limited to suppliers' and sub- contractors' cancellation charges; and (iv) a sum in respect of the profits which SA Group Ltd would have made under the Contract but for its termination. 16.3 The provisions of Clauses 4.2, 5.5, 5.6, 6, 7.2, 8, 10, 12, 15, 17, 19, 20, 23.5 and 24 shall survive termination of this Contract together with any other provision which by the nature of its terms is implicitly intended to survive termination.

## 17 FORCE MAJEURE

17.1 SA Group Ltd shall not be liable for any failure to perform, or any delay in performing, its obligations if the failure or delay is due directly or indirectly to any cause beyond the reasonable control of SA Group Ltd, which shall include but not be limited to the following:

17.1.1 any act of God, fire, flood, explosion, accident, war, governmental actions, strikes, civil disturbance or emergency;

17.1.2 any major plant or equipment or power failure or shortage which has a material effect on the operation of a facility; or

17.1.3 the postponement of any trial or test as a result of adverse weather or unsafe conditions.



17.2 In the event of failure or delay arising from such circumstances, SA Group Ltd will provide full details to the Customer and shall take reasonable steps to mitigate the effect of the delay. Performance of the Contract shall be suspended for such time as the delay continues.

17.3 Either Party may terminate this Contract upon written notice to the other Party and if the event of Force Majeure lasts more than 180 days. In such event the Parties shall, subject to the provisions of Clause 16.3, be released from all obligations under the Contract and the Customer shall pay to SA Group Ltd within seven (7) days: (i) all outstanding payments invoiced by SA Group Ltd under the Contract at the date of termination; (ii) any amount due pursuant to Clause 4.3; and (iii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination.

## 18 ASSIGNMENT

18.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of SA Group Ltd. 18.2 SA Group Ltd may assign the Contract or any part of it to any person, firm or company.

## 19 PUBLICITY

19.1 Neither the Customer nor SA Group Ltd shall without the prior written consent of the other Party; (i) make use of the other Party's name; (ii) make use of the name of any of the other Party's personnel, customers or agents; (iii) make use of any information obtained under the Contract for publicity purposes; or (iv) refer to the other Party or the Contract in any advertisement except to the extent required by law or any competent regulatory body.

## 20 DISPUTE RESOLUTION

20.1 If any dispute arises out of or in connection with this Contract ("Dispute") the Parties undertake that, prior to the commencement of any legal proceedings pursuant to Clause 24, they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other.

20.2 If the Dispute has not been resolved to the satisfaction of either Party within thirty days of initiation of the procedure pursuant to Clause 20.1 or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may deal with the Dispute through legal proceedings issued in accordance with Clause 24.

## 21 EXPORT LICENCES

21.1 SA Group Ltd shall use reasonable endeavours to obtain all necessary UK export or other licences, consents, clearances and/or authorisations (together, the "Export Licences") required in order to sell and export the Services and Deliverables.

21.2 The Customer shall, at its own cost and expense, assist SA Group Ltd in obtaining an end-user certificate, undertaking or such other information as shall be reasonably required by SA Group Ltd to pursue any application for Export Licences.

21.3 In the event that such Export Licences are not granted or are revoked, then:

21.3.1 such event shall be deemed to be a Force Majeure event under Clause 17 and SA Group Ltd shall have no liability to the Customer for completing the sale of any Services or Deliverables affected by such Export Licences, or for any loss, expense or damage whatsoever suffered by the Customer; and



21.3.2 notwithstanding Clause 17.3, SA Group Ltd may, by notice in writing to the Customer, immediately terminate this Contract or any part of it relating to the Services or Deliverables in respect of which the Export Licences have not been granted or have been revoked.

## 22 NOTICES

22.1 A notice given under or in connection with the Contract must be in writing and delivered by hand or sent by first class post to the Company Secretary at SA Group Ltd's registered office with a copy to the Commercial Manager at the address set out in the Contract or (as the case may be) to the address of the Customer shown in the Contract or to such other address as either SA Group Ltd or the Customer (as the case may be) may substitute by notice to the other Party.

22.2 Notice shall be deemed given:

22.2.1 if sent by first class post or international overnight courier: two business days after posting or sending by such courier exclusive of the day of posting or sending;

22.2.2 if delivered by hand: on the day of delivery;

## 23 MISCELLANEOUS

23.1 No amendment to this Contract shall be effective unless signed on behalf of both Parties.

23.2 A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

23.3 Failure by either Party to enforce, at any time or for any period, any one or more of the terms or conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Contract.

23.4 The Contract constitutes the entire agreement between the parties in connection with its subject matter and neither Party has relied on any representation or promise except as expressly set out in the Contract. 23.5 If any provision of these terms and conditions is held by any competent authority to be illegal, void, voidable, invalid, unenforceable or unreasonable in whole or in part it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

## 24 GOVERNING LAW AND JURISDICTION

24.1 The Contract shall be governed by and construed in accordance with English law.

24.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English Courts PROVIDED THAT each Party shall have the right to enforce a judgment of the English Courts in a jurisdiction in which the other Party is incorporated or in which any assets of the other Party may be situated AND FURTHER PROVIDED THAT each Party shall have the right to take proceedings before the courts of any competent authority of any country for injunctive or interim remedies in relation to any breach of this Agreement including any infringement of a Party's Intellectual Property.