

Terms and Conditions of Contract for Goods and Services

1 Interpretation

1.1 In these terms and conditions:

“Agreement” means the contract between (i) the Customer and (ii) the Supplier constituted in accordance with clause 2;

“Charges” means the charges payable for the provision of the Goods and/or the Services and as defined at clause 8;

“Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

“Customer” means the person identified in the Order and/or the Specification;

“Date of Delivery” means that date by which the Goods must be Delivered to the Customer, as specified in the Order and/or the Specification or, if no such date is specified, then within 14 days of the date of the Order;

“Deliver” means the hand over of the Goods to the Customer at the address and on the date specified in the Order, which shall include unloading and any other specific arrangements agreed in accordance with Clause 5. Delivered and Delivery shall be construed accordingly;

“Data Protection Legislation” means (a) the UK GDPR, (b) the Data Protection Act 2018; (c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);

“Data Subject” has the meaning given to it as defined in the Data Protection Legislation;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach (such term as defined by the Data Protection Legislation);

“EIRs” means the Environmental Information Regulations 2004;

“EU GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in European Union law;

“Expiry Date” means the date for expiry of the Agreement as set out in the Specification and/or the Order;

“FOIA” means the Freedom of Information Act 2000;

“Goods” means the goods to be supplied by the Supplier to the Customer under the Agreement;

“Information” has the meaning given under section 84 of the FOIA;

“Key Personnel” means any persons specified as such in the Order, the Specification or

otherwise notified as such by the Customer to the Supplier in writing;

“Law” means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Order” the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's tender/quotation as the case may be;

“Party” the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;

“Personal Data” has the meaning as defined in the Data Protection Legislation;

“Protective Measures” means technical and organisational measures which must take account of (a) the nature of the data to be protected; (b) the harm that might result from a Data Loss Event; (c) the state of technological development; and (d) the cost of implementing any measures; including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Purchase Order Number” means the Customer's unique number relating to the order for Goods and/or the Services to be supplied by the Supplier to the Customer in accordance with the terms of the Agreement;

“Rectification Plan” the Supplier's plan (or revised plan) to rectify its material default which shall include: (a) full details of the material default that has occurred, including a root cause analysis; (b) the actual or anticipated effect of the material default; and (c) the steps which the Supplier proposes to take to rectify the material default (if applicable) and to prevent such material default from recurring, including timescales for such steps and for the rectification of the material default (where applicable);

“Reorganisation Event” means any structural change to the Customer including amalgamation, division, dissolution, boundary changes, or transfer of functions to another local authority or public body, whether voluntary or imposed by Law or government direction;

“Request for Information” has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);

“Services” means the services to be supplied by the Supplier to the Customer under the Agreement;

“Specification” means any specification or specifications for the Goods and/or the Services, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier;

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;

“Staff Vetting Procedures” means vetting procedures that accord with good industry practice or, where applicable, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time;

“Subprocessor” means any third party appointed to process Personal Data on behalf of the

Processor related to this contract;

“Supplier” means the person named as Supplier in the Order;

“Term” means the period from the Commencement Date to the Expiry Date including any extension period as may be entered into in accordance with clause 3.2 (unless terminated in accordance with the terms and conditions of the Agreement);

“UK GDPR” has the meaning as set out in section 3(10) of the Data Protection Act 2018, supplemented by section 205(4);

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 Basis of Agreement

- 2.1 The Order constitutes an offer by the Customer to purchase the Goods and/or Services from the Supplier subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
 - 2.2.1 the Supplier issuing a written acceptance of the Order; or
 - 2.2.2 any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Agreement shall come into existence (**Commencement Date**).
- 2.3 These terms and conditions apply to the Agreement to exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these terms and conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified in accordance with the Order or Specification.

3 Term

- 3.1 The Agreement shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 3.2 or terminated

in accordance with the terms and conditions of the Agreement.

- 3.2 Except where the Order and/or the Specification set out that the Term shall be for a fixed period, the Customer may extend the Agreement for a period of up to 6 months, or such other period as may be set out in the Order and/or the Specification, by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

4 Supply of Goods

- 4.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Goods to the Customer subject to and in accordance with the terms and conditions of the Agreement.
- 4.2 In supplying the Goods, the Supplier shall co-operate with the Customer in all matters relating to the supply of Goods and comply with all the Customer's instructions.
- 4.3 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
- 4.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
 - 4.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 4.3.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 4.3.4 be free from design defects; and
 - 4.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause.

5 Delivery of Goods

- 5.1 The Supplier shall Deliver the Goods to the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be to the address specified in the Order. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
- 5.2 Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Goods shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the

Supplier or any of the Supplier's Staff, agents or sub-contractors.

- 5.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 5.4 Unless otherwise stipulated by the Customer in the Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 5.5 The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Charges or that part of the Charges for Goods which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.
- 5.6 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking)
- 5.7 The Supplier warrants that:
 - 5.7.1 it has full clear and unencumbered title to all the Goods;
 - 5.7.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

6 Supply of Services

- 6.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 6.2 In supplying the Services, the Supplier shall:
 - 6.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 6.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 6.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 6.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 6.2.5 comply with all applicable Laws; and
 - 6.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 6.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.
- 6.4 The Parties acknowledge that a Reorganisation Event may necessitate variations to this

Agreement to reflect changed circumstances, statutory requirements, or operational arrangements any such variations shall be agreed in writing in accordance with clause 6.3 above and shall take into account the principles of maintaining service quality and value for money.

- 6.5 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.6 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.7 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.8 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.9 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.10 Without prejudice to clause 6.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.11 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.
- 6.12 The Supplier shall:
 - 6.12.1 Have a clear business continuity and disaster recovery plan in their service descriptions;
 - 6.12.2 Ensure that its business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required; and
 - 6.12.3 If requested by the Customer prior to entering into this Agreement, the Supplier must ensure that its business continuity and disaster recovery plan is consistent

with the Customer's own plans (as amended from time to time).

7 Customer Remedies

7.1 Where:

- 7.1.1 the Supplier fails to Deliver the Goods or part of the Goods;
- 7.1.2 the Goods or part of the Goods do not comply with the provisions of clause 4; and/or
- 7.1.3 the Supplier fails to perform the Services by the applicable date or, in the opinion of the Customer (acting reasonably), there is otherwise a material default in the provision of the Services;

then the provisions of clause 7.2 shall be enforceable by the Customer.

7.2 Without limiting any of its other rights or remedies implied by statute or common Law, the Customer shall have one or more of the following rights:

- 7.2.1 to terminate the Agreement;
- 7.2.2 request that the Supplier, free of charge, deliver substitute goods and/or perform substitute services within the timescales specified by the Customer;
- 7.2.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 7.2.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of those Goods duly returned;
- 7.2.5 where the Customer has paid in advance for Goods that have not been delivered by the Supplier and/or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier;
- 7.2.6 to buy the same or similar goods and/or services from another supplier;
- 7.2.7 to recover any expenses incurred in respect of buying substitute goods and/or services from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs; and
- 7.2.8 to require that the Supplier provide a Rectification Plan within 10 Working Days of the Customer's request alongside any additional documentation that the Customer requires. Once such Rectification Plan is agreed between the Parties (without the Customer limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.

8 Charges, Payment and Recovery of Sums Due

8.1 Unless otherwise provided in the Order or Specification or otherwise agreed by the Parties in writing:

- 8.1.1 in respect of the Goods: the Supplier shall invoice the Customer on or at any time after completion of the Delivery; and/or
- 8.1.2 in respect of the Services: the Supplier shall invoice the Customer on completion of the Services.
- 8.1.3 Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods and/or Services supplied in the

invoice period.

- 8.2 The Charges for the Goods and/or Services shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services and, unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods (including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage) and/or the Services.
- 8.3 Where the Supplier submits an invoice to the Customer in accordance with clause 8.2, the Customer will consider and verify that invoice within 7 days.
- 8.4 In consideration of the supply of the Goods and/or Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days from the date on which the Customer has determined that the invoice is valid and undisputed. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 8.5 Where the Customer fails to comply with clause 8.3 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed, for the purposes of clause 8.4, 7 days after receipt of the invoice by the Customer.
- 8.6 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 8.6.1 Provisions having the same effect as clauses 8.3 - 8.5 of this Agreement; and
- 8.6.2 A provision requiring the counterpart to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses 8.3 - 8.5 of this Agreement.
- 8.7 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and/or the Services.
- 8.8 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods and/or the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 19.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 22.
- 8.9 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

9 Staff

- 9.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 9.1.1 refuse admission to the relevant person(s) to the Customer's premises;
- 9.1.2 direct the Supplier to end the involvement in the provision of the Goods and/or

the Services of the relevant person(s); and/or

- 9.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

9.2 The Supplier shall:

- 9.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time;
- 9.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- 9.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

9.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

9.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

10 Assignment and Sub-Contracting

10.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

10.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

10.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

10.4 In the event that a Reorganisation Event results in the transfer of the Customer's functions to a successor body then, subject to clause 6.4, all of the Customer's rights, obligations and liabilities under this Agreement will transfer to such successor body.

10.5 Provided that the Customer has given prior written consent, the Supplier shall be entitled to novate this Agreement where:

- 10.5.1 the specific change in contractor was provided for in the procurement process for the award of this Agreement; or
- 10.5.2 there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative

11 Intellectual Property Rights

- 11.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 11.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the supply or use of the Goods and/or the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of Law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 11.3 The Customer shall promptly notify the Supplier of any infringement claim made against it relating to the supply or use of any Goods and/or Services and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.
- 11.4 The Supplier hereby grants the Customer:
- 11.4.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the supply or use of the Goods and/or the Services; and
 - 11.4.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
 - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the supply or use of the Goods and/or the Services,including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Goods and/or the Services provided.
- 11.5 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods and/or the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

12 Governance and Records

12.1 The Supplier shall:

- 12.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 12.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

12.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods and/or the Services supplied under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

13 Confidentiality, Transparency and Publicity

13.1 Subject to clause 13.2, each Party shall:

- 13.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 13.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

13.2 Notwithstanding clause 13.1, a Party may disclose Confidential Information which it receives from the other Party:

- 13.2.1 where disclosure is required by applicable Law or by a court of competent jurisdiction;
- 13.2.2 to its auditors or for the purposes of regulatory requirements;
- 13.2.3 on a confidential basis, to its professional advisers;
- 13.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 13.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 13.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 13.2.6 where the receiving Party is the Customer:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - (b) on a confidential basis to any Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

or

- (d) in accordance with clause 14;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 13.

- 13.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA or the EIRs redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs.
- 13.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

14 Freedom of Information

- 14.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs and shall:
- 14.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the EIRs;
 - 14.1.2 transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 14.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 14.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 14.2 The Supplier acknowledges that the Customer may be required under the FOIA and the EIRs to disclose Information concerning the Supplier or the Goods and/or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure
- 14.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods and/or the Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

15 Data Protection

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a

party's obligations under the Data Protection Legislation.

- 15.2 The parties acknowledge that, unless otherwise set out in the Order Form, for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where **Controller** and **Processor** have the meanings as defined in the Data Protection Legislation).
- 15.3 Where a party is a Processor, it must only process Personal Data if authorised to do so by the Controller.
- 15.4 The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, including:
 - 15.4.1 a systematic description of the expected processing and its purpose;
 - 15.4.2 the necessity and proportionality of the processing operations;
 - 15.4.3 the risks to the rights and freedoms of Data Subjects; and
 - 15.4.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 15.5 The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.
- 15.6 The Processor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.
- 15.7 If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.
- 15.8 The Processor must use all reasonable endeavours to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - 15.8.1 are aware of and comply with the Processor's duties under this clause 15;
 - 15.8.2 are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - 15.8.3 are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Agreement; and
 - 15.8.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 15.9 The Processor must not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 15.9.1 the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of Data Protection Act 2018) or, where this is not possible, the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the Data Protection Act 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "IDTA"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "Addendum"), as published by the Information Commissioner's Office from time to time as well as any additional measures determined by the Controller;
 - 15.9.2 the Data Subject has enforceable rights and effective legal remedies when transferred;
 - 15.9.3 the Processor meets its obligations under the Data Protection Legislation by

providing an adequate level of protection to any Personal Data that is transferred; and

- 15.9.4 the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.

15.10 The Processor must notify the Controller immediately if it:

- 15.10.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 15.10.2 receives a request to rectify, block or erase any Personal Data;
- 15.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 15.10.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- 15.10.5 receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and
- 15.10.6 becomes aware of a Data Loss Event.

15.11 Any requirement to notify under clause 15.10 includes the provision of further information to the Controller in stages as details become available.

15.12 The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.10. This includes giving the Controller:

- 15.12.1 full details and copies of the complaint, communication or request;
- 15.12.2 reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
- 15.12.3 any Personal Data it holds in relation to a Data Subject on request;
- 15.12.4 assistance that it requests following any Data Loss Event; and
- 15.12.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.

15.13 The Processor must maintain full, accurate records and information to show it complies with this clause 15. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:

- 15.13.1 is not occasional;
- 15.13.2 includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
- 15.13.3 is likely to result in a risk to the rights and freedoms of Data Subjects.

15.14 The Parties shall designate a Data Protection Officer if required by the Data Protection

Legislation.

15.15 Before allowing any Subprocessor to process any Personal Data, the Processor must:

15.15.1 notify the Controller in writing of the intended Subprocessor and processing;

15.15.2 obtain the written consent of the Controller;

15.15.3 enter into a written contract with the Subprocessor so that this clause 15 applies to the Subprocessor; and

15.15.4 provide the Controller with any information about the Subprocessor that the Controller reasonably requires.

15.16 The Processor remains fully liable for all acts or omissions of any Subprocessor.

15.17 At any time the Customer can, with 30 Working Days' notice to the Supplier, change this clause 15 to replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement).

15.18 The parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office or any other regulatory authority.

16 Liability

16.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

16.2 Subject always to clause 16.3

16.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

16.2.2 except in the case of claims arising under clauses 11.5 and 21.3, in no event shall either Party be liable to the other Party for any:

(a) loss of profits;

(b) loss of business;

(c) loss of revenue;

(d) loss of or damage to goodwill;

(e) loss of savings (whether anticipated or otherwise); and/or

(f) any indirect, special or consequential loss or damage.

16.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

16.3.1 death or personal injury caused by its negligence or that of its Staff;

16.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;

16.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods

16.3.4 any other matter which, by law, may not be excluded or limited.

16.4 The Supplier's liability under the indemnity in clauses 11.5 and 21.3 shall be unlimited.

17 Insurance

17.1 The Supplier shall, at its own cost, effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover specified in the Specification and/or the Order or, if no such minimum levels are provided, an adequate level of cover in respect of all risks which may be incurred by the Supplier arising out of the Supplier's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier and shall include public liability insurance with a limit of liability of not less than £5 million in relation to any one claim or series of claims.

17.2 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause (and/or the Specification/Order) or a broker's verification of insurance to demonstrate that the required insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

17.3 If, for whatever reason, the Supplier fails to give effect to and maintain the required insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

17.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement.

18 Force Majeure

18.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Agreement by written notice to the other Party.

19 Termination

19.1 In respect of the supply of Services and without limiting its other rights and remedies the Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or if the Term is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

19.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement in whole or in part (in the case of Goods this may be before Delivery or after Delivery (where only part of Goods have been Delivered)) by written notice to the Supplier with immediate effect if the Supplier:

19.2.1 (without prejudice to clause 19.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

19.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

19.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice

- specifying the breach and requiring it to be remedied;
- 19.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 19.2.5 breaches the provisions of clauses 9.2, 13, 14, 15 and 20; or
- 19.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 19.2.6) in consequence of debt in any jurisdiction.
- 19.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 19.2.4 or any potential such change of control.
- 19.4 In addition to the Supplier's statutory rights, the Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 19.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 4.2, 4.3, 6.2, 6.4, 6.6, 6.10, 6.11, 9, 10, 11, 12.2, 13, 14, 15, 16, 19.6, 21.3, 22 and 23.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.
- 19.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 19.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Goods and/or the Services; and
- 19.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

20 Compliance

- 20.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 20.2 The Supplier shall:
- 20.2.1 comply with the reasonable requirements of the Customer's security arrangements;
- 20.2.2 comply with all the Customer's health and safety measures;
- 20.2.3 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
- 20.2.4 perform its obligations under the Agreement in accordance with all applicable equality law and the Customer's equality and diversity policy as provided to the Supplier from time to time;
- 20.2.5 take all reasonable steps to secure the observance of clause 20.2.4 by all Staff; and
- 20.2.6 supply the Goods and any packaging and/or supply the Services in accordance

with the Customer's environmental policy as provided to the Supplier from time to time.

- 20.3 Any Goods provided pursuant to this Agreement shall be packed and marked in a proper manner and in accordance with any instructions specified in the Order and/or the Specification, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 20.3.

21 Prevention of Fraud and Corruption

- 21.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 21.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 21.3 If the Supplier or the Staff engages in conduct prohibited by clause 21.1 or commits fraud in relation to the Agreement or any other contract with the Customer the Customer may:
- 21.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 21.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

22 Dispute Resolution

- 22.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 22.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 22.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 22.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

23 General

- 23.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 23.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior

written agreement of the Parties.

- 23.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 23.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 23.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 23.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 23.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 23.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

24 Notices

- 24.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 24.3, e-mail to the address of the relevant Party set out in the Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 24.3 Notices under clauses 18 (Force Majeure) and 19 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 24.1.

25 Governing Law and Jurisdiction

- 25.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.