

STANDARD TERMS FOR THE PURCHASE OF GOODS AND SERVICES

July 2019

1. INTERPRETATION

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

Business Day:	a day (other than a Saturday, Sunday or a public holiday) within England.
Buyer:	Port of Tyne Authority a trust port of Maritime House, Tyne Dock, South Shields, NE34 9PT.
Buyer Materials:	has the meaning set out in clause 4.1(j).
Commencement Date:	the commencement date set out within the Contract, Purchase Order or any Special Terms and Conditions.
Conditions:	these terms and conditions set out within this document and as amended from time to time in accordance with clause 19.10.
Contract:	the contract between the Buyer and the Supplier for the purchase of Goods and/or Services in accordance with these Conditions as supplemented by any Special Terms and Conditions.
Contract Period:	the period for performance of the Contract set out in the Contract, Purchase Order, Special Terms and Conditions or Tender in accordance with clause 2.5 and any extension in accordance with clause 2.6.
Data Protection Legislation:	means the General Data Protection Regulation (EU) (2016/679) (GDPR) and any applicable UK legislation that modifies, implements or applies it, and "controller", "data subject", "Personal Data" and "processor" each have the meaning set out in the Data Protection Legislation.
Deliverables:	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods and/or Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
European DP Law:	as applicable, (a) the GDPR and any data protection legislation applicable (including UK DP Law) and (b) the ePrivacy Regulation (The Privacy and Electronic Communications (EC Directive) Regulations 2003 (2003 No. 2426)) and any other applicable privacy legislation; whether or not there is a Brexit event, and includes any superseding legislation.
Goods:	the Goods (including any part or parts of them), including goods required to be delivered in performance of Services and Goods returned to the Supplier for repair, as set out in the Contract, Purchase Order or Tender.
Intellectual Property Rights:	all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in

trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Purchase Order:	the Buyer's Purchase Order, used by the Buyer to enter into an agreement to purchase Goods and/or Services.
Services:	including without limitation any Deliverables, together with all equipment required and any associated Goods provided by the Supplier in relation to those Services as set out within the Contract, Purchase Order or Tender.
Special Terms and Conditions:	any additional Terms and Conditions as set out in the Contract, Purchase Order and/or Tender.
Specification:	the specification and requirements for any Goods and/or Services including any related plans and drawings, attached or referred to in the Contract, Purchase Order or Tender.
Supplier:	the person, firm or company identified on the Contract or Purchase Order as the provider of Goods and/or Services.
Tender:	the Buyer's invitation to tender and the Suppliers response to the invitation to tender for the supply for Goods and/or Services pursuant to the Contract and any additional or supporting documentation.
UK DP Law:	means the Data Protection Act 2018 and regulations/other subordinate legislation (a) made under that Act or (b) made under section 2(2) of the European Communities Act 1972 which relate to the GDPR.

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

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation or regulation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes faxes and e-mails.

2. **BASIS OF CONTRACT**

- 2.1. The Purchase Order constitutes an offer by the Buyer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2. These Conditions shall be the only conditions upon which the Buyer contracts with the Supplier and they shall govern the Contract to the exclusion of all other terms or conditions that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Subject to the Buyer notifying the Supplier in writing and in explicit terms that:
 - (a) these Conditions do not apply to the Contract; or
 - (b) the Buyer agrees to be bound to a specified variation to these Conditions for the purpose of the Contract,
- 2.3. In the event of any ambiguity, conflict or contradiction between these conditions and a Purchase Order or Tender, these conditions shall prevail, save for provisions in the Purchase Order dealing with time and place of delivery or quantity of Services, which provisions shall prevail.
- 2.4. The Purchase Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Purchase Order; or
 - (b) any act by the Supplier consistent with fulfilling the Purchase Order,
- 2.5. The Contract shall commence on the Commencement Date and shall continue for the Contract Period unless terminated in accordance with the Contract or otherwise lawfully terminated, or is extended under clause 2.6.
- 2.6. The Buyer may extend the Contract Period by notifying the Supplier in writing prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire at the end of the Contract Period.
- 2.7. All of these Conditions shall apply to the supply of both Goods and/or Services except where the application to one or the other is specified.

3. **WARRANTIES**

- 3.1. The Supplier warrants to the Buyer that the Goods and any consumables or equipment provided as part of the Service shall:
 - (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the Specification or held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgment;
 - (b) be of the best available design, of the best quality, standards and techniques, and ensure that the Deliverables, and all Goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design (including latent defect);
 - (c) correspond with the relevant description and the Specification;
 - (d) not be changed without prior written consent of the Buyer;
 - (e) be free from defects in design, materials and workmanship and remain so for 12 months after delivery;
 - (f) comply with all applicable statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling and delivery.

- (g) be accompanied by all necessary and appropriate information, documentation, warnings and instructions in relation to the safe use, handling, storage, operation, transportation and disposal
- (h) be properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (i) when delivered, be accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods or other consumable or equipment (including the OEM and/or Port of Tyne code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

3.2. The Supplier warrants to the Buyer that that it is fully qualified, experienced and equipped to perform its obligations under the Contract, and warrants to the extent Services are provided they shall be performed:

- (a) by a sufficient number of appropriately qualified, trained and experienced personnel;
- (b) with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) in accordance with the Contract, Purchase Order any Tender and the Specification;
- (d) including any associated Goods, equipment, tools and vehicles and such other items as are required to provide the Services;
- (e) to the reasonable satisfaction of the Buyer

3.3. The Supplier warrants that it shall at all times and at the Supplier's own expense in relation to the performance of its obligations under the Contract:

- (a) maintain all licences, permissions, authorisations, consents and permits that it needs;
- (b) ensure that any designs created do not infringe the copyright or intellectual property of any third party.
- (c) co-operate with the Buyer, and comply with all instructions of the Buyer;
- (d) comply with all applicable laws, regulations, regulatory policies, guidance and industry codes which may apply to the provision of the Goods and/or Services;
- (e) observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises;
- (f) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

3.4. The Supplier acknowledges that the Buyer may rely or act on the Services.

4. **PERFORMANCE**

4.1. The Supplier shall ensure that:

- (a) from the Commencement Date and for the Contract Period, they provide the Goods and/or Services to the Buyer in accordance with the terms of the Contract.
- (b) they meet any performance dates for the Goods and/or Services specified in the Contract and/or Purchase Order or notified to the Supplier by the Buyer.
- (c) the Goods and/or Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for purpose expressly or impliedly made known to the Supplier by the Buyer;

- (d) Goods are delivered on the date (and where applicable at the time) specified in the Contract and/or Purchase Order or, if no such date is specified, then the Goods shall be delivered on a date and at a time reasonably specified by the Buyer thereafter, or otherwise within a reasonable period and between 09:00 - 17:00 on a normal Business Day in England.
- (e) Services shall be performed on the date and at a time specified in the Contract and/or Purchase Order or, if no such date is specified, on the date and at the time reasonably specified by the Buyer thereafter, or otherwise within a reasonable period of the date of the Contract and/or Purchase Order and between 09:00 - 17:00 on a normal Business Day in England. Save where the Services are of a recurring or periodic nature, unless otherwise specified the Contract and/or Purchase Order, or otherwise agreed by the Buyer in writing, any date for the performance of the Services shall be deemed to be the date on which the Services should be both commenced and completed.
- (f) Goods are delivered to the Buyer's premises which is generally General Stores, Riverside Quay, Tyne Dock, South Shields, NE33 5SP or such other location as is set out in the Purchase Order or as instructed by the Buyer before delivery (**Delivery Location**);
- (g) time of delivery of the Goods and/or performance of the Services shall be of the essence. Failure to deliver the Goods and/or perform the Services within the time specified in the Contract shall entitle the Buyer to the remedies set out in clause 5.2.
- (h) where the Supplier requires the Buyer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier, irrespective of any reimbursements to which the Buyer may be entitled.
- (i) they obtain the Buyer's written approval of any artwork for designed Goods and/or Services prior to commencing any work;
- (j) they hold all Goods, materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Supplier (**Buyer Materials**) in safe custody, at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation;
- (k) where the Supplier arranges to have the Buyer Materials transported to the Delivery Location or to the premises of a third party nominated by the Buyer or the Supplier the Supplier shall do so at its own risk;

4.2. The Buyer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Buyer's premises for the purpose of providing the Services and/or delivering the Goods; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Goods and/or Services and the Buyer considers reasonably necessary for the purpose of providing the Goods and/or Services;

4.3. The Buyer may inspect and test the Goods at any time before delivery and if following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply with the Supplier's warranties at clause 3.1, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. For the avoidance of doubt, this action shall be in conjunction with clause 5.3.

4.4. Notwithstanding any such inspection or testing in accordance with clause 4.3, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Buyer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4.5. Unless so stated in the Contract the Supplier shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered in instalments, each instalment may be invoiced for separately. However, failure by the Supplier to deliver any one

instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in clause 5.2 in respect of all of the Goods to be supplied under the Contract.

- 4.6. Where Goods are delivered by quantity or weight if the Supplier delivers +/- 5% of the quantity of Goods ordered, the Buyer may at its sole discretion reject the Goods and/or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, a pro-rata adjustment shall be made to the price for the Goods.
- 4.7. The Supplier shall inform the Buyer immediately on becoming aware of any material matter that could adversely affect the Buyer's use or enjoyment of the Goods or Services.
- 4.8. The Buyer reserves the right to require any Supplier personnel performing Services and/or delivering or installing Goods on the site to undergo random alcohol and/or drugs tests inline with its then current substance misuse policy which shall be made available on request and the Supplier shall procure that such personnel shall co-operate with the performance of such tests.

5. **CONSEQUENCES OF DEFAULT**

5.1. Without prejudice to the Buyer's other rights under this Contract or otherwise if:

- (a) the Supplier breaches any of the warranties set out in clause 3; or
- (b) the Supplier breaches any other provision of the Contract; or
- (c) or any of the Goods and/or Services otherwise fail to comply with the provisions of the Contract;

the Buyer may avail itself of any one or more of the remedies set out in clause 5.2 at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Buyer.

5.2. The remedies available to the Buyer following the occurrence of one, or more of the events referred to in clause 5.1 are:

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

The Supplier shall recognise that damages arising from clause 5.2 (c) through to (e) may be inadequate and the Buyer reserves the right to seek injunctive relief from the courts if appropriate.

5.3. If the Supplier has delivered Goods that do not comply with any of the warranties set out in clauses 3.1, 3.3 and/or 4.1 then, without limiting its other rights or remedies, the Buyer shall inform the Supplier of the non-conformity of the Goods and the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's failure to supply Goods in accordance with clauses 3.1, 3.3 and/or 4.1.

5.4. If the Supplier has supplied Services that do not comply with the requirements of clauses 3.2, 3.3 and/or 4.1 then, without limiting its other rights or remedies, the Buyer shall inform the Supplier of the non-conformity of the Services and the Buyer shall have one or more of the following rights, whether or not it has accepted performance of the Services or any part of them:

- 5.4.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 5.4.2. to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- 5.4.3. to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- 5.4.4. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 5.4.5. to recover from the Supplier any expenditure incurred by the Buyer in obtaining substitute services or deliverables from a third party; and
- 5.4.6. to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's failure to comply with clause 3.2, 3.3 or 4.1.

5.5. Without prejudice to the generality of the foregoing, where the Supplier:

- 5.5.1. fails to deliver the Goods on the date for delivery as determined in accordance with clause 4.1(d); or
- 5.5.2. fails to perform the Services (or where applicable, complete the Services) on the date determined in accordance with clause 4.1(e)

then the Buyer will be entitled to reduce the price for the Goods and/or the charges for the Services (as applicable) by [five per cent (5%)] for each whole or part day of the delay, capped at one hundred per cent (100%) of the price for the Goods and/or the charges for the Services (subject to any other figure specified in the applicable Purchase Order). Any reduced price paid by the Buyer under this clause will nevertheless be considered full discharge of the Buyer's obligations to pay for the Goods and/or Services. Where the Goods and/or Services have been paid for before the Buyer imposes a price reduction under this clause, the Supplier shall repay the applicable proportion to the Buyer within five (5) Business Days of a written demand by the Buyer.

- 5.6. The Supplier agrees that the price reduction set out in clause 5.5 is a legitimate and reasonable price reduction to reflect the decreased value and utility of the Goods and/or Services occasioned by their late delivery. Accordingly, the Supplier agrees that the price reduction is not in any way compensatory is without prejudice to any other right and remedies that the Buyer may have.
- 5.7. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement Goods supplied by the Supplier.
- 5.8. The Buyer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

6. CHARGES AND PAYMENTS

- 6.1. The price for Goods shall be the price set out in the Contract and/or Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date, and shall be inclusive of the costs of packaging, insurance and carriage of the Goods and delivery to the Delivery Location. No extra charges shall be effective, unless otherwise agreed in writing by the Buyer.
- 6.2. The charges for Services shall be set out in the Contract and/or Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Buyer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.3. In respect of Goods and/or Services, the Supplier shall invoice the Buyer on or at any time after completion of delivery or performance. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 6.4. Payment of undisputed amounts shall, unless otherwise set out in the Contract and/or Purchase Order be initiated 30 days from date of invoice, following delivery or performance, provided that the invoice quotes the Purchase Order number and includes all required supporting information.
- 6.5. All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 6.6. The Supplier is not entitled to suspend delivery of Goods and/or the provision of Services as a result of any non-payment of sums by the Buyer.
- 6.7. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing Services, and the Supplier shall allow the Buyer to inspect such records at all reasonable times on request.
- 6.8. The Buyer may, without notice and without limiting its other rights or remedies set off any amount owing to it by the Supplier on any account whatsoever whether or not related to the Contract, whether a present or future liability and whether liquidated or unliquidated, against any amount payable by the Buyer to the Supplier under the Contract.

7. RISK AND TITLE

- 7.1. Risk in any Goods and any Deliverables supplied under the Contract shall pass to the Buyer upon delivery, without prejudice to any rights or rejection which may accrue to the Buyer under the Contract or otherwise.
- 7.2. Title in any Goods and/or Deliverables supplied under the Contract shall pass to the Buyer on the earlier of:
 - (a) the time at which the Goods and/or Deliverables become identifiable as the Goods or Deliverables to be delivered under the Contract
 - (b) delivery in accordance with any delivery instructions; or
 - (c) payment of the price or any instalment of the price
- 7.3. Delivery of the Goods shall be completed on completion of unloading of the Goods at the Delivery Location. Where Goods are collected by the Buyer from the Supplier, the point of delivery shall be when the Buyer, or Buyer's representative accepts custody of the Goods. The issue of a receipt by the Buyer to the Supplier for the Goods, shall not constitute any acknowledgement of the condition or nature of those Goods. The Buyer shall not be deemed to have accepted any Goods until it has

had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods becomes apparent.

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

7.5. All Buyer Materials are the exclusive property of the Buyer.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier and the Supplier assigns to the Buyer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the outputs of the Services, including for the avoidance of doubt the Deliverables.

8.2. The Supplier shall obtain waivers of all moral rights in the outputs, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

8.3. The Supplier shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with clause 8.1.

9. INSURANCE AND LIABILITY

9.1. From Commencement Date and for the duration of the Contract and for a period of 3 (three) years after termination or completion, the Supplier shall maintain in force, at its own expense, with a reputable insurance company to cover the Supplier's full liability under the Contract and in any event, the following insurance policies;

- (a) public liability insurance for not less than £10,000,000 for any one incident;
- (b) product liability insurance for not less than £10,000,000 for any one incident;
- (c) employer's liability insurance for not less than £10,000,000
- (d) professional indemnity insurance for not less than £2,000,000;

9.2. The Supplier shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9.3. The Supplier shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect) including consequential loss, loss of profit, loss of trade, loss of reputation and any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Buyer (calculated on a full indemnity basis) as a result of or in connection with:

- (a) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods or any Deliverables.
- (b) any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

- (c) any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

9.4. This clause 9 shall survive termination of the Contract.

10. **CONFIDENTIALITY**

10.1. Each party (**Receiving Party**) shall during the Contract Term and for a period of 3 (three) years after termination or completion of the Contract keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

10.2. This clause 10 shall survive termination of the Contract.

11. **TERMINATION**

11.1. Without limiting its other rights or remedies, the Buyer may terminate the Contract in whole or part, with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits either a material (as determined by the Buyer in its absolute discretion) or a persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive);
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (l) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2. Without limiting its other rights or remedies the Buyer may at any time and without cause terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier three (3) months written notice; and
- (b) in respect of the supply of Goods, by giving the supplier four (4) weeks written notice to the Supplier, in which case the Buyer shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.3. In any of the circumstances in these Conditions in which the Buyer may terminate the Contract, where both Goods and Services are supplied, the Buyer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services (or any part of either of them), and the Contract shall continue in respect of the remaining supply or where the Goods and/or Services are to be supplied in instalments the Buyer may terminate the Contract with regard to undelivered or unperformed instalments.

12. **CONSEQUENCES OF TERMINATION**

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

- (a) where Services are terminated, the Supplier shall immediately deliver to the Buyer all Deliverables, whether or not then complete, and return all Buyer Materials. If the Supplier fails to do so, then the Buyer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination or completion shall continue in full force and effect.

13. **FORCE MAJEURE**

13.1. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 14 (fourteen) days, the Buyer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

13.2. The parties agree and acknowledge that the consequences of the United Kingdom exiting the European Union shall not be treated as a cause for the purposes of clause 13.1 and the Supplier

shall be obliged to put in place all measures to perform its obligations under the Contract regardless of the consequences of the exiting of the United Kingdom from the European Union.

14. **DATA PROTECTION**

- 14.1. Each party shall comply with its obligations under the Data Protection Legislation in relation to any personal data processed in accordance with this Contract.
- 14.2. Taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each party shall implement (and at all times keep in place) appropriate technical and organisational measures to ensure a level of security appropriate to guard against unauthorised or unlawful processing of the Personal Data and/or loss, accidental or unlawful destruction, alteration, unauthorised disclosure of, access to or damage to the Personal Data and to ensure a level of security appropriate to the risk from any processing, including as appropriate:
 - 14.2.1. the pseudonymisation and encryption of Personal Data;
 - 14.2.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 14.2.3. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - 14.2.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 14.3. To the extent that the Supplier processes any Personal Data on behalf of the Buyer, it shall:
 - 14.3.1. implement and maintain such technical and organisational security measures in relation to such data as are commensurate to the harm that would be caused by any unauthorised disclosure thereof, and to ensure that such measures are complied with;
 - 14.3.2. not engage another processor of the Personal Data without prior specific or general written authorisation from the controller and, where it relies on general authorisation, inform the controller of any intended changes concerning the addition or replacement of other processors;
 - 14.3.3. where it engages another processor for carrying out processing activities on behalf of the Buyer, impose obligations on that other processor that are substantially equivalent to the terms set out in this clause 14.3;
 - 14.3.4. only process the Personal Data strictly in accordance with the Buyer's documented instructions from time to time, or as otherwise required by applicable laws;
 - 14.3.5. not transfer the Personal Data to an international organisation or to a place outside both the United Kingdom and the European Economic Area other than on the documented instructions of the Buyer;
 - 14.3.6. where processing Personal Data other than on the basis of documented instructions from the Buyer, first inform the Buyer of the requirement to process it on the grounds of applicable laws (unless prohibited from doing so by applicable laws);
 - 14.3.7. ensure that the persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 14.3.8. taking into account the nature of the processing, assist the Buyer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Buyer's obligation to respond to requests under the Data Protection Legislation in relation to data subjects' rights of access to Personal Data, rectification of Personal Data, erasure

of Personal Data, restriction of Personal Data, data portability, objection to processing of Personal Data, and in relation to automated decision-making;

- 14.3.9. taking into account the nature of the processing and the information available to the processor, assist the Buyer in ensuring compliance with its obligations under the Data Protection Legislation in relation to the security of processing, notification of Personal Data breaches to regulatory authorities and data subjects, and carrying out and consulting with regulatory authorities in relation to data protection impact assessments;
 - 14.3.10. at the choice of the Buyer, delete or return the Personal Data to the Buyer after the end of the provision of the services, and delete existing copies unless required to store it by applicable laws;
 - 14.3.11. make available to the Buyer all information necessary to demonstrate compliance with the obligations under the Data Protection Legislation in relation to the appointment and use of processors;
 - 14.3.12. allow the Buyer access to its personnel, systems and premises on reasonable notice from time to time to audit the Supplier's compliance with the obligations set out in this clause; and
 - 14.3.13. immediately inform the Buyer if, in its reasonable opinion, an instruction given to it by the Buyer infringes Data Protection Legislation, or any other applicable laws relating to data protection.
- 14.4. In addition to any other remedy available to the Buyer, the Supplier shall indemnify and keep indemnified and defend and hold harmless the Buyer and its servants or agents in full and on demand and at the Supplier's own expense against any penalties, fines, administrative sanctions or other sums payable that are imposed on the Buyer by a data protection supervisory authority/the Information Commissioner and against any liabilities or losses and all costs (on a full indemnity basis), claims, compensation, damages, expenses or interest incurred by the Buyer or for which the Buyer may become liable, in each case due to one or more of the matters listed below but howsoever arising, and whether wholly or in part resulting directly or indirectly from matters listed below, and whether or not such losses or the consequences of the matters listed below were in the parties' contemplation or were foreseeable at the date of this Contract:
- 14.4.1. any failure by the Supplier to comply with any of the Supplier's obligations under clauses 14.1 - 14.3;
 - 14.4.2. any breach by a sub-processor of its contract with the Supplier;
 - 14.4.3. any breach by the Supplier or a sub-processor of European DP Law; and/or
 - 14.4.4. any claim made by the Buyer pursuant to clause 14.5.
- 14.5. The indemnity provided by the Supplier under clause 14.4 shall also cover any and all claims made by the Buyer against the Supplier for compensation under Article 82(5) GDPR and/or under UK DP Law, including for any costs, damages or expenses paid by the Buyer to a Data Subject in the event of a breach of European DP Law and/or for any facilities or other benefits provided at the Buyer's expense to a Data Subject in the event of a breach of European DP Law, which is the responsibility of both parties (whether they are responsible with other controllers/processors or not).
- 14.6. The Supplier's liability under the indemnity in clause 14.4 shall, notwithstanding any provision to the contrary in the Contract, be unlimited.
- 14.7. This clause 14 shall survive termination of the Contract.
15. **TUPE**
- 15.1. Unless expressly agreed otherwise, the Supplier undertakes and warrants that it will procure that no employees, as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**), will transfer from the Supplier and/or its agents and or sub-contractors directly or indirectly

to the Buyer, their agents and/or sub-contractors on the termination or expiry of all or part of the Contract or otherwise in connection with the Contract by operation of or the provisions of TUPE.

- 15.2. The Supplier shall indemnify the Buyer for itself and any future provider of Goods and/or Services to the Buyer from and against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the operation of the TUPE in connection with the termination of this Contract or the termination of the provision of any of the Services.
- 15.3. Each and every direct, indirect or consequential cost, claim, liability, expense, loss or demand (including legal costs and other professional expenses on an indemnity basis) awarded against or incurred or paid by the Buyer, its agents and/or sub-contractors as a result of any breach of the warranty given in clause 15.1.
- 15.4. Notwithstanding and without prejudice to the foregoing provisions of this clause, where the Supplier believes that any employees may, or may be alleged to, transfer from the Supplier and/or its agents and or sub-contractors directly or indirectly to the Buyer, their agents and/or sub-contractors on the termination or expiry of all or part of the Contract or otherwise in connection with the Contract by operation of or the provisions of TUPE, then the Supplier will promptly notify the Buyer of the same, and will promptly provide the Buyer with all information that the Buyer may request in relation to the relevant employees, whether or not the Supplier is required to do so by the provisions of TUPE at the applicable time or at all.

16. **EXIT ASSISTANCE**

- 16.1. On the termination of a Contract for the performance of Services which has been in place for a period exceeding two months in duration, the Supplier agrees that it will provide the Buyer with all such information and assistance as the Buyer may reasonably request for the purposes of:
 - 16.1.1. minimising or eliminating any disruption to the Buyer's operations consequent to the cessation of the Services; and/or
 - 16.1.2. enabling a supplier who is to provide services in substitution to the Services to commence the provision in an efficient manner which minimises disruption for the Buyer.
- 16.2. Without limiting the generality of clause 16.1, the Supplier's exit obligations will include performing the following tasks in a diligent manner:
 - 16.2.1. documenting and delivering documentation, equipment and materials used to provide the Services;
 - 16.2.2. providing work volumes, staffing requirements, and information on historical performance for each service component, over the preceding twelve (12) months (or such shorter period during which the Services may actually have been provided);
 - 16.2.3. with respect to work in progress as at the termination of the Contract, documenting the current status, stabilising for continuity during transition, and providing any required training to achieve transfer of responsibility without loss of momentum or adverse impact on project timetables;
 - 16.2.4. complete any work in progress as at the termination of the Contract, or where directed by the Buyer, ensure the same is handed over to the replacement supplier for completion; and
 - 16.2.5. providing information and raw data for reports, as required.
- 16.3. On written request by the Buyer, the Supplier will promptly produce a detailed written exit plan detailing how it will achieve the above objectives on any cessation of the Services. Where an exit plan is put in place, the Supplier shall diligently perform the exit plan on termination of the Contract.

- 16.4. The Supplier shall on request providing such information as the Buyer may demand to assist the Buyer in any tender process conducted for the provision of the services which are to replace the Services.
- 16.5. The Supplier shall co-operate in the transfer of necessary knowledge reasonably required for the provision of the Services in an efficient manner to either the Buyer itself or such replacement supplier as the Buyer may direct. This will include, without limitation, the Supplier clearly explaining the relevant procedures and operations to the Buyer (or its replacement supplier) and promptly responding to any questions for the purposes of adequately imparting the knowledge needed by the Buyer or its replacement supplier.
- 16.6. The Supplier's compliance with the terms of this clause 16 shall be without additional charge to the Buyer and shall be deemed to have been included in the charges levied for the Services during the continuation of the Contract.

17. **NON-SOLICITATION**

- 17.1. The Supplier undertakes that it will not during the term of the Contract and for a period of 12 (twelve) months following termination or expiry of the Contract, without the prior written consent of the Buyer actively employ, engage, solicit, entice, endeavour to solicit and/or entice a third party to engage and/or employ any of the employees and/or independent contractors of the Buyer who:

- (a) have been engaged to work to a substantial extent in relation to the Contract over the 12 (twelve) months preceding such action; or
- (b) have had direct contact with the Supplier over the 12 (twelve) months preceding such action

This clause 17.1 will not apply in relation to any person who replies unsolicited to an open advertisement placed by the Supplier.

18. **ASSIGNMENT AND SUBCONTRACTING**

- 18.1. The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.
- 18.2. The Buyer may at any time and without notice to the Supplier assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

19. **GENERAL**

19.1. **Notices**

Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number. Notices may be served by email to the email address given in the Contract (or such other email address as the Buyer may notify to the Supplier and vice versa)

- 19.2. Any notice or communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address referred to above; or,
- (b) if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or,
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or,
- (d) in the case of fax, at the time of transmission provided a successful transmission report is available

(e) in the case of email, when sent, provided a delivery receipt is obtained

19.3. For the purposes of this clause, "writing" shall include e-mails and/or fax and for the avoidance of doubt notice given under this Contract shall be validly served if sent by e-mail and/or fax. For the avoidance of doubt this clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action.

19.4. **Dispute Resolution**

19.4.1. The parties will attempt to resolve disputes between them arising out of or relating to the Contract using the informal dispute resolution procedure, as set out in this clause 19.4 prior to the initiation court proceedings. Nothing in this clause 19.4 will restrict at any time, whilst the informal dispute resolution procedures are in progress or before or after they are invoked, either party's freedom to seek any urgent or injunctive relief, or a party's freedom to exercise any right of termination accruing to it.

19.4.2. Either party may give notice to the other in writing that they believe a dispute has arisen. Following the receipt of such notice, the parties shall use their respective reasonable endeavours to arrange, within ten (10) Business Days of the date of the notice, a meeting between a senior representative of each party to discuss and attempt to resolve the issue. The representative of each party shall be suitably senior within their organisation when considering the subject matter of the dispute, and shall be empowered to resolve the dispute on behalf of that party.

19.4.3. Where the meeting referred to in clause 19.4.2 does not resolve the dispute, the dispute may, with the written consent of both parties, be referred to mediation. Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (**CEDR**). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within ten (10) Business Days after the date of the agreement to mediate, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party. The mediation shall be conducted in English at the offices of CEDR in London. Mediation is without prejudice to the rights of the parties in any future proceedings.

19.5. **Publicity**

The Supplier shall not make or permit any person to make any public announcement concerning the existence, subject matter or terms of this Contract or their relationship with the Buyer without the prior written consent of the Buyer except as may be required by law or governmental or regulatory authority.

19.6. **Waiver and cumulative remedies:**

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19.7. **Severance:**

(a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19.8. **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

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

19.10. **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Buyer.

19.11. **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.