

(1) CUSTOMER

(2) SUPPLIER

PURCHASE ORDER

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. INTERPRETATION

1.1 Definition

In these Conditions, the following definitions apply

"Business Day"	:	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
"Commencement Date"		has the meaning set out in clause 2.2.
"Conditions"		these terms and conditions as amended from time to time in accordance with clause 14.8.
"Contract"		this contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions, to be incorporated as part of every purchase Order issued by the Customer and agreed and accepted by the Supplier.
Customer		Northamptonshire County Council, Angel Square, Angel Street, Northampton NN1 1ED or a School or such other federated body or public organisation within the County of Northamptonshire which places an Order through processes provided by Northamptonshire County Council with the Supplier by reference to these terms and conditions

"Customer Materials" has the meaning set out in clause 5.3(i).

"Data Protection Legislation" (i) the General Data Protection Regulation (Regulation (EC) 2016/679 (GDPR), the Law Enforcement Directive (Directive(EU) 2016/6900 (LED) and any national implementing laws, as amended from time to time, (ii) the Data Protection Act 2018 (DPA 2018) (subject to Royal Assent) to the extent that it relates to the processing of personal data and privacy (iii) all applicable law about the personal data and privacy , including in each of (i), (ii) and (iii) all relevant regulatory policy, mandatory guidance and codes of practice.

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach.

"Data Subject 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 Protection Impact Assessment" means an assessment by the Supplier of the impact of the envisaged processing on the protection of Personal Data.

"Deliverables" all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"Deliverables" all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts)..

"Goods" the goods (or any part of them) set out in the Order and or the Goods Specification

"Goods Specification" any specification for the Goods, including any related plans and drawings, which is agreed in writing by the Customer and the Supplier.

"Intellectual Property Rights" all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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.

"Joint Controllers" where two or more Controllers jointly determine the purpose and means of processing.

"Order" the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, as the case may be.

"Prohibited Act"

- (a) offering, giving or agreeing to give any servant of the Customer any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract and or any Order or any other agreement with the Customer; or
 - (ii) showing favour or disfavour to any person in relation to the Contract and or any Order or any other agreement with the Customer;
- (b) committing or attempting to commit any offence:
 - (i) under the Prevention of Corruption Acts 1889 to 1916, the Local Government Act 1972 and or the Bribery Act 2010; under legislation and or at common law creating offences in respect of theft and fraudulent acts;
 - (ii) defrauding or attempting to defraud or conspiring to defraud the Customer;
- (c) any action that may reasonably be considered to be to the detriment of the Customer's and or its end user's welfare, either by positive action or by omission. Such action shall

include but is not limited to; breach of the law, related to health, safety and or care, safeguarding, abuse, sexual allegations and or misconduct; financial malpractice or business continuity failure.

Regulated Activity	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
"Protective Measures"	means appropriate technical and organisational measures which may include: 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 measures adopted by it.
"School"	any school maintained by Northamptonshire County Council and if applicable any other institution that wishes to utilise Northamptonshire County Councils official ordering process.
"Services"	the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order and or the Service Specification.
"Service Specification"	the description or specification for Services agreed in writing by the Customer and the Supplier.
"Staff"	all persons employed by the Supplier to perform the Order which shall include any servants, agents, suppliers, subcontractors used in the performance of its obligations.
Sub-Processor	means any third party appointed to process Personal Data on behalf of the Contractor related to the Contract.
"Supplier"	the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 Construction

In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

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

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order,
at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the 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 Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
 - (a) correspond with their description and any applicable Order and/or Goods Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and 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 judgment;

- (c) where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, 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 Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the 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; and
- (c) if the Supplier requires the Customer to return any packaging material for the Goods 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.

4.2 The Supplier acknowledges and agrees that time of delivery is of the essence and shall deliver the Goods:

- (a) on the date specified in the Order;
- (b) to the Customer's premises or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**);
- (c) during the Customer's normal hours of business, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

- (a) delivers less than ninety five (95) per cent of the quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than one hundred and five (105) per cent of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods 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 Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid 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 Customer to the remedies set out in clause 6.

4.6 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from the Commencement Date or the date set out in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

5.3 In providing the Services, the Supplier shall:

- (a) ensure that in providing the Services time of performance is of the essence;
- (b) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use personnel 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 this Contract;
- (e) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (h) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;

- (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and

6. CUSTOMERS REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (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 Customer in obtaining substitute goods and/or services from a third party;
 - (d) where the Customer 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 Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct twenty five (25) per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of seventy five (75) per cent of the total price of the Goods. If the Customer exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods to:
- (a) 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) terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) 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) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- (f) claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.5 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall provide:

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

8. CHARGE AND PAYMENT

8.1 The price for the Goods:

- (a) shall be the price set out in the Order; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.2 The charges for the Services shall be set out in the 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 Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 8.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by the Customer 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 Customer, the Customer 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.
- 8.6 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of four (4) per cent per annum above the base rate for the time being of BANK OF ENGLAND accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Customer disputes in good faith.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.8 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier under the Contract against any amount payable by the Customer to the Supplier under the Contract.

9. STATUTORY OBLIGATIONS

9.1 Bribery, Corruption and Fraud

- (a) As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the provision of the Services it will notify the other party.
- (b) In circumstances where a person employed by the Supplier is reasonably suspected of having

committed a Prohibited Act the Supplier will provide to the Customer such information as is reasonable to satisfy the Customer that appropriate action has been taken to safeguard the Customer's premises, its users and or the Customer.

9.2 Anti - Discrimination

- (a) The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment or the Services they deliver.
- (b) The Supplier shall take all reasonable steps to secure the observance of clause 9.2(a) by all servants, employees or agents of the Supplier and all suppliers and subcontractors employed in performance of this Contract.

9.3 Statutory Rights

Nothing in these conditions is intended to affect in any way the statutory rights of the Customer under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any subsequent amending or consolidating legislation.

9.4 Health and Safety

- (a) The Supplier shall fully comply with its responsibility to health and safety and any additional rules made known to the Supplier and or its Staff from time to time by the Customer.
- (b) Either party shall notify the other as soon as practicable of any health and safety hazards at the Customer's premises of which it becomes aware. The Supplier will draw these hazards to the attention of the Customer and will instruct those persons in connection with any necessary associated safety measures.

10. INDEMNITY AND INSURANCE

10.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- (a) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or sub-

contractors;

- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods 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 sub-contractors; and
- (c) any claim made against the Customer 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.

10.2 For the duration of the Contract, the Supplier shall maintain in force, with a reputable insurance company, such policies of insurance as are necessary to cover any liability of the Supplier in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Supplier's carrying out or failing to carry out its obligations under the Contract or for which it may become liable to the Customer under clause 10, all statutory required insurance(s) including:

- (a) employers liability insurance shall be in the minimum sum of £10,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
- (b) public liability insurance cover shall be in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited;
- (c) directors and officers liability, trustee's liability, professional indemnity or similar as appropriate to the Suppliers circumstances shall be in the minimum sum of £2,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited which should also be in place for a 6 year period following the termination of the Contract;

10.3 Upon request, the Supplier will provide the Customer with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 10.2, so as to demonstrate that clause 10.3 is being complied with.

10.4 This clause 10 shall survive termination of the Contract.

11. PROTECTION OF INFORMATION, SAFEGUARDING AND AUDIT

11.1 Data Protection

- (a) This clause 11.1 applies where the Supplier is processing Personal Data as part of the

Services. The Parties acknowledge that for the purposes of Data Protection Legislation the Customer is the Controller and Supplier is the Processor. The only processing that the Supplier is authorised to do by the Customer is set out in the table on data protection in the Services Specification and may not be determined by the Supplier.

- (b) The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- (c) The Supplier shall provide all reasonable assistance to the Customer in any preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - i. a systematic description of the envisaged processing operations and the purpose of the processing;
 - ii. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- (d) The Supplier shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
 - i. process the Personal Data only in accordance with this clause 11.1 and the table in the Services Specification unless the Supplier is required to do otherwise by law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by law.
 - ii. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event which the Customer may reasonably reject (but failure to reject shall not amount to the approval by the Customer of the adequacy of the Protective Measures), having taken account of the:
 - A. nature of the data to be protected.
 - B. harm that might result from a Data Loss Event
 - C. state of technological development; and
 - D. cost of implementing any measures;
 - iii. ensure that:
 - A. the Supplier's Personnel do not process Personal Data except in accordance with the Contract.

- B. it takes all reasonable steps to ensure the reliability and integrity of Personnel who gave access to the Personal Data and ensure that they:
 - I. are aware of and comply with the Supplier's duties under his clause;
 - II. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
 - III. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by the Contract; and
 - IV. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - iv. not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - A. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or Law Enforcement Directive (Directive (EU) 2016/680) as determined by the Customer;
 - B. the Data Subject has enforceable rights and effective legal remedies;
 - C. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Supplier in meeting its obligations); and
 - D. the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - v. at the written direction of the Customer, delete or return Personal Data (and an copies of it) to the Customer on termination of the Contract unless the Supplier is require by law to retain the Personal Data.
- (e) Subject to clause 11.1(f), the Supplier shall notify the Customer immediately if it;
- i. receives a Data Subject Request (or purported Data Subject Request);
 - ii. receives a request to rectify, block or erase any Personal Data;
 - iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- iv. receives any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under the Contract.
 - v. receives a request from any third Party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law; or
 - vi. becomes aware of a Data Loss Event.
- (f) The Supplier's obligation to notify under clause 11.1(e) shall include the provision of further information to the Customer in phases, as details become available.
- (g) Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 11.1(e) (and within the timescales reasonably required by the Customer) including by promptly providing:
- i. the Customer with full details and copies of the complaint, communication or request;
 - ii. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - iii. assistance as requested by the Customer following any Data Loss Event
 - iv. assistance as requested by the Customer with respect to any request from the Information Commissioners Office, or any consultation by the Customer with the Information Commissioners Office.
- (h) The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless.
- i. The Customer determines the processing is not occasional;
 - ii. The Customer determines the processing includes special categories of data referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences related to Article 10 of the GDPR; and
 - iii. The Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects
- (i) The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- (j) The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- (k) Before allowing any Sub-processor to process any Personal Data related to the Contract, the Supplier must:
- i. Notify the Customer in writing of the intended Sub-processor and processing;

- ii. Obtain the written consent of the Customer;
 - iii. Enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause such that they apply to the Sub-Processor; and
 - iv. Provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require.
- (l) The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.
 - (m) The Customer, may at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses to similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract)
 - (n) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
 - (o) Where the Parties include two or more Joint Controllers as identified in the Services Specification or otherwise required by the Customer the Parties shall enter into a Joint Controller agreement to reflect their responsibilities in relation to Personal Data
 - (p) This clause 11.1 shall survive the termination or early expiry of the Contract.

11.2 Freedom of Information

- (a) The Supplier recognises the Customer's current and future obligations under the Freedom of Information Act 2000 (FOIA) and any codes of practice issued by the Government and the appropriate enforcement agencies. The Supplier will comply with this legislation in so far as it places obligations upon the Customer in the performance of its obligations under any contractual arrangement entered into. The Supplier will provide such assistance and support which may be requested from time to time by the Customer for the purposes of enabling or assisting the Customer to comply with the legislation.
- (b) In the event of a request made on the Customer for access to information under the FOIA or any notice, recommendation or complaint made to the Customer in relation to the FOIA, the Supplier will provide to the Customer in relation to an access request, any details in respect of the information as the Customer may request and a copy of the relevant information where the Customer requests such copy; and in relation to any notice, recommendation or complaint, any background details, supporting documentation and copy information which the Customer may request in order to deal with such notice, recommendation or complaint within five (5) Working

Days of the date of the request from the Customer.

- (c) The Supplier acknowledges that the Customer is obliged under the FOIA to disclose information, including information relating to its appointment under this Contract and the Contract, to third parties, subject to certain exemptions. The Supplier further accepts and acknowledges that the decision to disclose information and the application of any such exemptions under the FOIA will be at the Customer's sole discretion PROVIDED THAT the Customer shall act reasonably and proportionately in exercising its obligations under the FOIA as to whether any exemptions under section 43 of the FOIA may apply to protect the Supplier's legitimate commercial and trade secrets.

11.3 Confidentiality

Subject to clause 11.1 (Data Protection) and clause 11.2 (Freedom of Information) the Supplier shall not, without the prior written consent of the Customer, during or after the termination or expiry of this Contract disclose, directly or indirectly, to any person any information relating to the Contract or the Customer any information of whatever nature which is not in the public domain. The Supplier's obligations under this Condition shall survive the expiry or termination of the Contract for whatever reason.

11.4 Safeguarding Vulnerable Adults and Children

Where the supply of Services relates to a Regulated Activity, the Supplier shall:

- a) ensure that all individuals engaged in the supply of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
- b) monitor the level and validity of the checks under this clause 11.4 for each member of Staff.
- c) operate policies and procedures on personnel matters for its Staff. These should include appropriate arrangements for recruitment, checks for suitability, levels of qualification and/or experience for specific posts, training and development, and supervisory, disciplinary and grievance procedures, having regard to the nature of the Contract. Copies of policies and procedures must be made available to the Customer on request;
- d) not employ any Staff to undertake any Regulated Activity who appear unsuitable as a result of information received from the checks;
- e) comply with the Public Interest Disclosure Act 1998 and shall comply with the Customer's whistleblowing policy and encourage its Staff to report any incidents of malpractice within the provision of the Contract;

- f) ensure that all Staff are aware of the Local Safeguarding Policy and Procedures and will ensure that an up to date copy of the Local Safeguarding Policy and Procedures;
- g) have an internal policy for safeguarding vulnerable adults and children which is compatible to the Local Safeguarding Policy and Procedures;
- h) ensure that allegations, suspicions and incidents of abuse be followed up promptly by the Supplier in accordance with the Local Safeguarding Policy and Procedures; and
- i) ensure there are robust procedures for responding to suspicion or evidence of abuse and ensure that they follow-up concerns and pass relevant details to the Customer immediately.

11.5 Intellectual Property Rights

- (a) In respect of the Goods and any goods that are transferred to the Customer 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 Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- (b) The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- (c) The Supplier shall obtain waivers of all moral rights in the products, 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.
- (d) The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 11.5.
- (e) All Customer Materials are the exclusive property of the Customer.

11.6 Audit

- (a) The Supplier shall keep and maintain until six (6) years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

- (i) the Goods and/or Services provided under it;
 - (ii) all expenditure reimbursed by the Customer;
 - (iii) all payments made by the Customer.
- (b) The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be required in connection with the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier and or its Staff commits or attempts to commit a Prohibited Act;
- (b) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of receipt of notice in writing of the breach;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (g) 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 fourteen (14) days;

- (h) 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);
- (i) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) 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;
- (k) 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 12.1(b) to clause 12.1 (j) (inclusive);
- (l) 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
- (m) 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.

12.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier one (1) months' written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Customer 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.

12.3 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

13. CONSEQUENCES OF TERMINATION

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

- (a) where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer 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 shall continue in full force and effect.

14. GENERAL

14.1 Force majeure

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 fourteen (14) days, the Customer 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.

14.2 Assignment and subcontracting

- (a) 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 Customer.
- (b) The Customer may at any time 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.

14.3 Notices

- (a) 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.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 13.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 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.

14.5 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.

14.6 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.

14.7 Third parties

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

14.8 Variation

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.

14.9 Dispute Resolution

In the event of a dispute between the parties concerning the Order and/or this Contract, the parties shall attempt to resolve it amongst themselves before resorting to other forms of dispute resolution.

14.10 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.