**NEWARK AND SHERWOOD DISTRICT COUNCIL STANDARD TERMS AND CONDITIONS**

**1.**  **INTERPRETATION**

The following definitions and rules of interpretation apply in these Conditions.

**1.1**  Definitions:

**Business Day:**  a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:**  has the meaning given in [*Clause 2.2*](#co_anchor_a403380_1).

**Contract:**  these terms and conditions of contract between the Customer and the Supplier for the supply of Goods and/or Services.

**Control:**  has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer: Newark and Sherwood District Council**

**Customer Materials:**  has the meaning set out in [*Clause 5.3(j)*](#co_anchor_a460831_1).

**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 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 Purchase Order.

**Intellectual Property Rights:**  patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Purchase Order:**  the Customer’s Purchase Order form for the supply of Goods and/or Services.

**Services:**  the services to be provided by the Supplier under the Contract as set out in the Service Specification.

**Supplier:**  the person or firm from whom the Customer purchases the Goods and/or Services.

**1.2**  Interpretation:

**(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 and permitted assigns.

**(c)**  A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

**(d)**  Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**(e)**  A reference to **writing** or **written** includes email.

**2.**  **BASIS OF CONTRACT**

**2.1**  The Purchase Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with this Contract.

**2.2**  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, at which point and on which date the Contract shall come into existence (**Commencement Date**).

**2.3**  The terms in this Contract apply : **(a)** 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 **(b) in the absence of any other Customer contract which the Customer and Supplier enter into in respect of the Purchase Order.**

**2.4**  All of term terms in this Contract 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:

**(a)**  ensure that the Goods shall correspond with their description and any applicable specification;

**(b)**  ensure that the Goods shall 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 judgement;

**(c)**  ensure that the Goods shall where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

**(d)**  ensure that the Goods shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods

**(e)**  ensure that where Goods are hazardous they: (i) are suitably packed and marked by the Supplier with International Danger Symbols, the United Nations (UN) number and display the name and description of the materials in English. Transport and other documents must include a declaration of the hazard and the name of the materials in English (ii) are accompanied by emergency information, in English, in the form of written instructions, labels or markings (iii) observe the requirements of UK and international agreements relating to the packing, labelling and carriage of hazardous goods (iv) communicate to the Customer all information held by, or reasonably available to the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the hazardous Goods supplied shall be promptly communicated to the Customer.

**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 may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Contract.

**3.4**  If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier’s undertakings at [*Clause 3.1*](#co_anchor_a188444_1), the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

**3.5**  The Customer may 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 Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods, 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)**  it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

**4.2**  The Supplier shall deliver the Goods: 

**(a)**  on the date specified in the Purchase Order or, if no such date is specified, then within 2 days of the date of the Purchase Order. Time of delivery shall be of the essence, unless the Purchase Order specifically provides otherwise, and failure to deliver within the specified time shall entitle the Customer, at its discretion, and without prejudice to other rights, to treat such failure as a fundamental breach of Contract;

**(b)**  to the location set out in the Purchase Order or as instructed by the Customer before delivery (**Delivery Location**); and

**(c)**  during the Customer’s normal hours of business on a Business Day, 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 95% of the quantity of Goods Purchase Ordered, the Customer may reject the Goods; or

**(b)**  delivers more than 105% of the quantity of Goods Purchase 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 Purchase Ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment 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 6.1*](#co_anchor_a114474_1).

**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 date set out in the Purchase Order and for the duration of the Contract supply 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 Purchase Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

**5.3**  In providing the Services, the Supplier shall:

**(a)**  co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

**(b)**  perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier’s industry, profession or trade;

**(c)**  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 the Contract;

**(d)**  ensure that the Services will conform with all descriptions, standards and specifications set out in the specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;

**(e)**  provide all equipment, tools and vehicles and such other items as are required to provide the Services;

**(f)**  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;

**(g)**  obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

**(h)**  comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;

**(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;

**6.**  **CUSTOMER REMEDIES**

**6.1**  If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, 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)**  to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;

**(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;  and

(f) to reject the Goods/ and or Services (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense

**6.2**  If the Supplier has delivered Goods that do not comply with the undertakings set out in [*Clause 3.1*](#co_anchor_a188444_1), then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:

**(a)**  to terminate the Contract with immediate effect by giving written notice to the Supplier;

**(b)**  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;

**(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 Customer in obtaining substitute goods from a third party; and

**(f)**  to 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*](#co_anchor_a188444_1).

**6.4**  If the Supplier has supplied Services that do not comply with the requirements of [*Clause 5.3(d)*](#co_anchor_a232479_1) then, without limiting or affecting other rights or remedies available to it, the Customer shall 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 return the Deliverables to the Supplier at the Supplier’s own risk and expense;

**(c)**  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);

**(d)**  to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

**(e)**  to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and

**(f)**  to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier’s failure to comply with [*Clause 5.3(d)*](#co_anchor_a232479_1).

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

**6.6**  The Customer’s rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

**7.**  **CUSTOMER’S OBLIGATIONS**

**7.1**  Where relevant, the Customer shall:

**(a)**  provide the Supplier with reasonable access at reasonable times to the Customer’s premises for the purpose of providing the Services;

**(b)**  provide such necessary information for the provision of the Services as the Supplier may reasonably request.

**8.**  **CHARGES AND PAYMENT**

**8.1**  The price for the Goods:

**(a)**  shall be the price set out in the 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

**(b)**  shall be inclusive of the costs of packaging, insurance and carriage of the Goods. 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 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 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 the 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 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 make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this [*Clause 8.6*](#co_anchor_a72482_1)will accrue each day at the prevailing rate above the Bank of England’s base rate from time to time.

**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 at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

**9.**  **INTELLECTUAL PROPERTY RIGHTS**

**9.1**  All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

**9.2**  The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.

**9.3**  The Customer shall not sub-license, assign or otherwise transfer the rights granted by [*Clause 9.2*](#co_anchor_a373782_1).

**9.4**  The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

**9.5**  All Customer Materials are the exclusive property of the Customer.

**10.**  **INDEMNITY**

**10.1**  The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

**(a)**  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 (excluding the Customer Materials);

**(b)**  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 the Goods, as delivered, or the Deliverables; and

**(c)**  any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

**10.2**  This [*Clause 10*](#co_anchor_a546282_1) shall survive termination of the Contract.

**11.**  **INSURANCE**

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer’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.

**12.**  **CONFIDENTIALITY**

**12.1**  Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by [*Clause 12.2*](#co_anchor_a944313_1)*.*

**12.2**  Each party may disclose the other party’s confidential information:

**(a)**  to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party’s obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party’s confidential information must comply with this [*Clause 12*](#co_anchor_a104226_1); and

**(b)**  as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**12.3**  Neither party shall use the other party’s confidential information for any purpose other than to perform its obligations under the Contract.

**13.**  **TERMINATION**

**13.1**  Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

**(a)**  with immediate effect by giving written notice to the Supplier if:

**(i)**  there is a change of Control of the Supplier; or

**(ii)**  the Supplier’s financial position deteriorates to such an extent that in the Customer’s opinion the Supplier’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

**(iii)**  the Supplier commits a breach of [*Clause 5.3(h)*](#co_anchor_a121180_1),

**(b)**  for convenience by giving the Supplier 30 days’ written notice.

**13.2**  Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

**(a)**  the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;

**(b)**  the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by Purchase Order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

(c ) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business; or

**(d)**  the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

**14.**  **CONSEQUENCES OF TERMINATION**

**14.1**  On termination of the Contract, 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 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 the Contract.

**14.2**  Termination or expiry of the Contract shall not affect the parties’ rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**14.3**  Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

**15.**  **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 15 days’ written notice to the affected party.

**16. FREEDOM OF INFORMATION ACT 2000 (FOIA) and ENVIRONMENTAL INFORMATION REGULAITONS 2004**

**16.1** The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and EIR and shall therefore facilitate the Customer’s compliance with information disclosure requirements (as defined in section 84 FOIA). The Supplier shall ensure that all information produced, or held on behalf of the Customer, be retained and made available for disclosure or inspection upon the Customer’s request.

**16.2** The Customer draws to the Suppliers attention that the Customer may be obliged under the FOIA or EIR, to disclose information supplied by it or its agents to the Customer: (a) without consulting with the Supplier; or (b) following consultation with the Supplier and having taken the Supplier’s views into account.

**17. COMPLIANCE and DATA PROTECTION**

**17.1** The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of any law, enactment, order or regulation relating to discrimination in employment and the Supplier shall to the extent relevant, comply with the Customer’s equal opportunities policies.

**17.2** The Supplier shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Customer requests so as to enable the Customer to comply with its obligations under the Human Rights Act 1998.

**17.3** The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety (including those of the Customer), which may apply to staff and other persons working on the Customer's Premises in the performance of the Contract.

**17.4** The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

**17.5** The Supplier shall promptly notify the Customer of any health and safety hazards, which may arise in connection with the performance of the Contract.

**17.6** The Supplier shall provide the Goods, or procure that they are provided: (a) with reasonable skill and care and in accordance with best industry practice; (b) in accordance with all applicable Legal Obligations; (c) on the dates and times as specified in the Purchase Order (if applicable), timely provision of the Goods shall be of the essence of this Contract.

**17.7** The following definitions shall apply in the remainder of this clause 17:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meanings given in the GDPR.

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

**Data Protection Legislation**: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Protection Impact Assessment**: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Subject Access Request**: 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.

**DPA 2018**: Data Protection Act 2018.

**GDPR**: the General Data Protection Regulation (Regulation (EU) 2016/679).

**LED**: Law Enforcement Directive (Directive (EU) 2016/680).

**Protective Measures**: 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 such measures adopted by it.

**Sub-processor**: any third Party appointed to process Personal Data on behalf of the Provider related to this Agreement.

**17.8** Where the Supplier is acting as a “Processor” and the Customer is a “Controller”, the Customer shall provide specific instructions on the nature and purpose of processing to be undertaken.

**17.9** The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

**17.10** The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include: (a) a systematic description of the envisaged processing operations and the purpose of the processing; (b) an assessment of the necessity and proportionality of the processing operations in relation to the Goods; (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

**17.11** The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Customer instructions, unless the Supplier er 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 Legal Obligation;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:(i) nature of the data to be protected; (ii) harm that might result from a Data Loss Event; (iii) state of technological development; and (iv) cost of implementing any measures;

(c) ensure that: (i) the Supplier’s personnel do not process Personal Data except in accordance with this Agreement (and in particular the Schedule); (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier’s personnel who have access to the Personal Data and ensure that they: (A) are aware of and comply with the Supplier’s duties under this clause; (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor; (C) 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 this Agreement; and (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) 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: (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer; (ii) the Data Subject has enforceable rights and effective legal remedies; (iii) 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 Customer in meeting its obligations); and (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Legal Obligation to retain the Personal Data.

**17.12** Subject to clause 17.13, the Supplier shall notify the Customer immediately if it: (a) receives a Data Subject Access Request (or purported Data Subject Access Request); (b) receives a request to rectify, block or erase any Personal Data; (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation; (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement; (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legal Obligation; or (f) becomes aware of a Data Loss Event.

**17.13** The Supplier’s obligation to notify under clause 17.12 shall include the provision of further information to the Customer in phases, as details become available.

**17.14** 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 17.12 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing: (a) the Customer with full details and copies of the complaint, communication or request; (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject; (d) assistance as requested by the Customer following any Data Loss Event; (e) assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner's Office.

**17.15** 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:(a) the Customer determines that the processing is not occasional; (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

**17.16** The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.

**17.17** The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

**17.18** Before allowing any Sub-processor to process any Personal Data related to this agreement, the Supplier must: (a) notify the Customer in writing of the intended Sub-processor and processing; (b) obtain the written consent of the Customer; (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

**17.19** The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

**17.20** 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 or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

**17.21** 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 this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**18.**  **GENERAL**

**18.1**  **Assignment and other dealings.**

**(a)**  The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

**(b)**  The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer. It shall be a condition of any such consent to any sub-letting of the Contract that the Supplier shall ensure and be responsible for the compliance by any sub-contractor with the terms of the Contract, include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Customer and furnish the Customer with copies of any sub-contract arrangement upon the Customer’s request at any time.

**18.2**  **Notices.**

**(a)**  Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Purchase Order or specification.

**(b)**  A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this [*Clause 18.2(b)*](#co_anchor_a640252_1),business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**(c)**  This [*Clause 18.2*](#co_anchor_a345930_1) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**18.3**  **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this [*Clause 18.3*](#co_anchor_a969809_1) shall not affect the validity and enforceability of the rest of the Contract.

**18.4**  **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**18.5**  **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party

**18.6**  **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**18.7**  **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**18.8**  **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

**18.9**  **Prevention of Bribery.** The Customer may terminate this Agreement by written notice with immediate effect, and recover from the Supplier all losses resulting from such termination, if the Supplier, or any of its employees, agents or sub contractors (in all cases whether or not acting with the Supplier’s knowledge):

(a) directly or indirectly offers, promises or gives any person working for or engaged by the Customer a financial or other advantage to;

(b) induces that person to perform improperly a relevant function or activity;

(c) rewards that person for improper performance of a relevant function or activity;

(d) directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (i) commits any offence: (ii) under Section 117(2) of the Local Government Act 1972; (iii) under the Bribery Act 2010; (iv) under legislation creating offences concerning fraudulent acts; or (v) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Customer.

(e) defrauds, attempts to defraud, or conspires to defraud the Customer.

Any termination under clause 18.9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

**18.10 Dispute Resolution** If any dispute arises in connection with this Contract, a representative from each party shall, within 7 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by referring the matter to the relevant managers who will meet in a good faith effort to resolve the matter within 30 days of referral. If the dispute is not resolved by the managers, the parties will attempt to settle it by referring the matter to the parties respective Corporate Directors (or equivalent) who will meet in a good faith effort to resolve the matter within 30 days of referral. If the matter is not resolved through negotiation either party may refer the matter to mediation.

**18.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**18.12**  **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.