



## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

### 1. Definitions and Interpretations

- 1.1 Unless the context otherwise requires the following provisions shall have the meanings given to them below:

**Authority:** the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority;

**Authority Materials:** includes all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier;

**Business Continuity Event:** means any event or issue that could impact on the operations of the Supplier and its ability to provide the Goods and/or Services including any Force Majeure Event;

**Business Continuity Plan (BCP):** means the Supplier's business continuity plan which includes its plans for continuity of the provision of the Goods and/or Services (and the people and facilities used to provide them) to minimise the effect of any unplanned interruption or event that would significantly impact upon the ability of the Supplier to provide the Goods and/or perform the Services, in whole or in part, in accordance with the terms of the Contract.

**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 identified in the Purchase Order;

**Contract:** the contract between the Authority and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

**Data Processor:** has the same meaning as given to it under the Data Protection Legislation;

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);;

**Delivery Date:** the date specified by the Authority for delivery of the Goods or completion of the Services;

**DPA:** Data Protection Act 2018;

**EIR:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations as amended, updated and/or replaced from time to time;

**FOIA:** The Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation as amended, updated and/or replaced from time to time;

**Force Majeure Event:** means any circumstance not within a party's reasonable control including, without limitation:

- (a) Acts of God, flood, drought, earthquake or other natural disaster;
- (b) Terrorist attack, civil war, civil unrest, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) Nuclear, chemical or biological contamination or sonic boom;
- (d) Any Law or action taken by the UK government, including without limitation imposing an export or import restriction or any other sanctions which shall affect the performance of the Contract; and
- (e) Fire or explosion

but excluding any industrial dispute relating to the Supplier or its Staff or any other failure in the Supplier's or a Sub-contractor's supply chain. For the avoidance of doubt, a Force Majeure Event shall not extend to SARS-CoV-2.

**GDPR:** the General Data Protection Regulation (2016), Regulation (EU) 2016/679, as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK Law substantially replacing the same. All compliance references to GDPR in this Agreement are applicable from 25<sup>th</sup> May 2018.

**Goods:** the goods (or any part of them) to be supplied by the Supplier (or by the Supplier's sub-contractor) as set out in the Purchase Order;

**Insolvency Event:** where:

- (a) 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 or limited liability partnership) 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 his 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;

- (b) 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;
- (c) 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 that other party (being a company);
- (d) 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);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (h) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (i) the Supplier is appointed an official receiver.

**Law:** means any applicable Act of Parliament, sub-ordinate Legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

**Personal Data:** has the same meaning as given to it under the Data Protection Legislation;

**Premises:** the location where the Goods and/or Services are to be supplied.

**Price:** means the price payable to the Supplier by the Authority for the full and proper performance by the Supplier of its obligations under the Contract and in accordance with the provisions set out in the Contract;

**Purchase Order:** means a formal written order issued by the Authority setting out details in respect of the Goods and/or Services to be provided which shall be deemed to include these terms and conditions;

**Services:** the services to be supplied by the Supplier as specified by the Authority in the Purchase Order;

**Service Specification:** the description or specification for Services agreed in writing by the Authority and the Supplier;

**Staff:** all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under this Contract;

**Supplier:** the person, firm or company with whom the Authority places a Purchase Order for purchase of the Goods and/or Services.

1.2 The interpretation and construction of the terms and conditions shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to clauses as to the clauses of these terms and conditions which form part of the Contract;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- (g) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2. Commencement and Duration**

2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the Delivery Date or such date as identified in the Purchase Order, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated or extended.

## **3. The Purchase Order**

3.1 The Purchase Order sets out in detail the quantity and description of the Goods and/or Services.

## **THE GOODS**

### **4. Standard of the Goods**

4.1 The Supplier warrants that all Goods are of a satisfactory quality and fit for purpose, comply with all applicable published standards, meet all applicable health and safety requirements and comply with the Law.

4.2 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of its obligations under the Contract.

## **5. Delivery of Goods / Services**

5.1 The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Purchase Order or otherwise stipulated by the Authority.

5.2 Unless otherwise stated in the Purchase Order, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises/address of delivery. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded onto the Authority's vehicle.

5.3 Except where otherwise provided in the Purchase Order, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Authority or the Authority's duly authorised personnel shall reasonably direct.

5.4 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time specified, the Authority may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract in either case without prejudice to any other rights and remedies of the Authority.

5.5 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Business Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Authority.

5.6 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Purchase Order or otherwise stipulated by the Authority.

5.7 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.

5.8 Unless otherwise agreed in writing by the Authority the Price includes all delivery charges and costs.

5.9 The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order and the net, gross and tare

weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

5.10 Rights available to the Authority under clause 8 below shall not cease upon delivery.

## **6. Risk and Ownership**

6.1 Subject to clause 5.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause 8, pass to the Authority at the time of delivery.

6.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause 11), pass to the Authority at the time of delivery (or payment, if earlier).

## **7. Non-Delivery**

7.1 On dispatch of any consignment of the Goods the Supplier shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume, as well as special storage instructions (if any), and if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority may within ten (10) Business Days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered and may request the Supplier to deliver substitute Goods within the timescales specified by the Authority or terminate the Contract in accordance with clause 5.4. The delivery of substitute Goods shall be delivered free of charge by the Supplier to the Authority.

## **8. Inspection, Rejection and Guarantee**

8.1 The Authority or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and the Authority reserves the right to reject the Goods in accordance with clause 8.2.

8.2 The Authority may from time to time submit any of the Goods which have been delivered to the Authority under the Contract to one of the testing houses for examination. If any of the Goods submitted do not meet with the requirements of clause 4 the Authority may reclaim the cost of having the analysis carried out from the Supplier. In addition, any of the Goods which do not meet the requirements and any other Goods which may reasonably be expected not to meet those requirements may be rejected by the Authority and at the request of the Authority shall be replaced by the Supplier with Goods which meet the Authority's requirements.

- 8.3 The Authority may by written notice to the Supplier reject any of the Goods which fail to conform to a sample which has been formally approved by the Authority in writing or which fails to meet the requirements set out in the Contract. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to other rights and remedies) either:
- (a) have such Goods promptly, and in any event within five (5) Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the requirements set out in the Contract and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - (b) treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- 8.4 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- 8.5 The Supplier hereby guarantees the Goods for the period from the date of delivery to the date 12 months thereafter against faulty materials or workmanship. If the Authority shall within such guarantee period or within twenty five (25) Business Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- 8.6 Any Goods rejected or returned by the Authority as described in clause 8.2 shall be returned to the Supplier at the Supplier's risk and expense.

## **THE SERVICES**

### **9. Supply of the Services**

- 9.1 The Supplier shall supply the Services during the Contract in accordance with the Authority's requirements as set out in the Purchase Order, the provisions of the Contract and in compliance with the Law. The Authority may inspect and examine the manner in which the Supplier supplies the Services during normal business hours on reasonable notice.
- 9.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

- 9.3 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a default by the Authority in the reasonable opinion of the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 9.4 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 9.5 The Supplier shall provide all the equipment necessary for the supply of the Services.
- 9.6 The Supplier shall not deliver any equipment without obtaining prior approval of the Authority.
- 9.7 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority's default in the reasonable opinion of the Supplier. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of equipment when no longer required at its sole cost. Unless otherwise agreed, equipment brought onto the Premises shall remain the property of the Supplier.
- 9.8 The Supplier shall maintain all items of equipment within the Premises in a safe, serviceable and clean condition.
- 9.9 The Supplier shall at the Authority's written request at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of equipment.
- 9.10 On completion of the Services the Supplier shall remove the equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

## **10. Contract Performance**

- 10.1 The Supplier shall perform its obligations under the Contract:
- (a) with appropriate experienced, qualified and trained personnel with all due skill, care and diligence, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
  - (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) in compliance with all applicable Laws.

10.2 The Supplier warrants that:

- (a) the Goods and/or Services conform in all respects with the Purchase Order and, where applicable, with any sample approved by the Authority;
- (b) the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Contract;
- (c) the Goods and/or Services conform in all respects with all applicable Laws;
- (d) it shall provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (e) it shall obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (f) it shall observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
- (g) it shall hold all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier in safe custody at its own risk, maintain them in good condition until returned to the Authority, and not dispose or use such items other than in accordance with the Authority's written instructions or authorisation;
- (h) it shall not do or omit to do anything which may cause the Authority 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 Authority may rely or act on the Services; and
- (i) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Authority.

10.3 The Authority shall conduct a review of the performance of the Contract on such periods as shall be appropriate to the duration of the Contract. During any such review, a performance report shall be agreed and actioned as required.

## 11. Authority Remedies

11.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, and/ or the Supplier has delivered Goods and/ or Services which do not comply with any part of clause 10, then the Authority 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 Authority 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; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's failure carry out its obligations under the Contract.

## **12. Price and Payment**

### **12.1 The Price for the Goods and/ or Services:**

- (a) shall be the price set out in the Purchase Order; 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 Authority.

### **12.2 Payment of the Price shall be made by the Authority within thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.**

### **12.3 The Supplier shall ensure that each invoice:**

- (a) Includes the Supplier's name, address and contact details, VAT number and bank details;
- (b) clearly displays a valid Purchase Order number that the Supplier must be obtained from the Authority upon request for the provision of Goods and/or Services;
- (c) details the Goods and/or Services which the invoice relates to including delivery address;
- (d) Identifies a unique invoice reference number;
- (e) Is submitted via email to [invoices@essex-fire.gov.uk](mailto:invoices@essex-fire.gov.uk) in PDF or sent by post addressed to SHQ Kelvedon, London Road, Rivenhall, Witham, Essex, CM8 3HB.

### **12.4 If the Supplier fails to submit an invoice in accordance with clause 12.3 no payment shall become due until such time as an invoice has been submitted by the Supplier which conforms in all respect with the requirements set out in clause 12.3.**

### **12.5 The Authority may at any time, without notice to the Supplier, set off any liability of the Supplier to the Authority against any liability of the Authority 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 Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.**

### **12.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 23. Provided that the sum has been disputed in good faith, interest**

due on any sums in dispute shall not accrue until the earlier of twenty one (21) days after resolution of the dispute between the parties.

- 12.7 Subject to clause 12.6, if the Authority does not make payment within thirty (30) days of receipt of a valid and undisputed invoice, and this is not subject to a dispute or ability to withhold payment as set out in the Contract, the Supplier shall be entitled to charge interest on the late payment at 5% above the Bank of England Base Rate (for the avoidance of doubt the parties hereby expressly exclude the provisions of the Late Payment of Commercial Debts (Interest) Act 1998). The Supplier shall not suspend the supply of the Services and/or Goods if any payment is overdue.
- 12.8 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 12.9 For the purposes of paragraph 12.8, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

### **13. Cancellation and Termination**

#### **Cancellation**

- 13.1 The Authority may cancel the Contract at any time before the Goods are delivered by providing the Supplier with written notice. The Supplier shall promptly repay to the Authority any sums paid in respect of the Price and the Authority shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 **Termination for breach** The Authority may terminate this agreement with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this Contract; or
  - (b) if there is an Insolvency Event.
- 13.3 If this agreement is terminated by the Authority pursuant to clause 13.2 such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs. For the avoidance of doubt non-compliance or breach of any Law by the Supplier shall be treated as a breach of a material obligation under clause 13.2(a).

#### **Termination on notice**

- 13.4 The Authority may terminate the contract for Services upon giving reasonable written notice. The Authority shall pay for any service supplied prior to the date of termination but shall otherwise not be liable for any loss or damage whatsoever arising from such termination.

#### **Termination for conduct affecting the Authority's reputation**

13.5 The Authority may terminate the Contract by written notice with immediate effect if the Supplier;

13.5.1 has become involved in or becomes associated with (whether directly or indirectly) any situation or activity (whether caused by the Supplier or a third party including a sub-contractor) which:

(a) in the reasonable opinion of the Authority will or may have a negative effect on the reputation of the Authority or any aspect of its business;

(b) would expose the Authority or any aspect of its business to disrepute, scandal, embarrassment or content, and diminish the public trust in the Authority;

(c) reflects unfavourably on the reputation of the Authority, its brands, its purpose or its services; or

(d) might affect the Authority carrying out its normal day to day duties.

13.6 The occurrence of any situation as defined in clause 13.5 shall be deemed a material breach of the Contract in terms of clause 13.2(a) regardless of whether the Supplier has caused the situation or not.

13.7 If the occurrence of any situation as defined in clause 13.5 is caused or contributed to by one of the Supplier's sub-contractors, consultants, legal advisors or other third party, then the Supplier shall immediately terminate the contract with that third party upon the Authority's written request to do so.

13.8 In consideration of clause 13.7, the Supplier shall ensure that appropriate contractual obligations are inserted into contracts with sub-contractors, consultants and the like to ensure compliance with clause 13.7.

#### **14. Consequences of termination**

14.1 On termination of the Contract, any materials in the possession of the Supplier which are owned by the Authority shall be returned to the Authority immediately at no cost.

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

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

#### **15. Force majeure**

15.1 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 a Force Majeure Event. If the period of delay or non-performance continues for one (1) month, the party not

affected by the Force Majeure Event may terminate this agreement by giving five (5) Business Days written notice to the affected party.

## **15.2 Intellectual property rights**

- 15.3 In respect of the Goods and any goods that are transferred to the Authority as part of the Services under this Contract, 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 Authority, it will have full and unrestricted rights to sell and transfer all such items to the Authority.
- 15.4 The Supplier grants to the Authority, or shall procure the direct grant to the Authority of, a fully-paid up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence for the purposes of receiving and using the Services and Goods.
- 15.5 The Supplier shall obtain waivers of all moral rights in the products 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.
- 15.6 The Supplier shall, promptly at the Authority's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Authority in accordance with clause 15.4.
- 15.7 All Authority Materials are the exclusive property of the Authority.

## **16. Indemnity**

- 16.1 The Supplier shall indemnify the Authority and keep it indemnified 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 professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:
- (a) any breach of the warranties contained in clause 10.2;
  - (b) any claim made against the Authority 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 Authority Materials);
  - (c) any claim made against the Authority 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 Services;
  - (d) any claim made against the Authority by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services; and
  - (e) non-compliance with or breach of any Law.

16.2 This clause 16 shall survive termination of the Contract.

## **17. Insurance**

17.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance, employer's liability insurance and any other insurance as may be required by Law, to cover the liabilities that may arise under or in connection with the Contract and shall, on the Authority'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.

## **18. Confidentiality**

18.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2.

18.2 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 18; and
- (b) as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority, including any requirements for disclosure under the FOIA or the EIR.

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

## **19. Freedom of Information**

19.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR. The Supplier shall:

- (a) provide all necessary assistance and co-operation as reasonably requested by the Authority to enable the Authority to comply with these information disclosure requirements;
- (b) transfer to the Authority any Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request For Information;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

19.2 The Authority shall not be liable for any disclosure of any information that is required pursuant to the FOIA.

## 20. Data Protection

20.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

20.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

20.3 Without prejudice to the generality of clause 20.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

20.4 Without prejudice to the generality of clause 20.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) Process that Personal Data only on the written instructions of the Authority unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Authority;
- (b) Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (c) Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) Not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (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; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
  - (v) assist the Authority, at the Authority's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (vi) notify the Authority without undue delay on becoming aware of a Personal Data breach;
  - (vii) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 20 and allow for audits by the Authority or the Authority's designated auditor

20.5 The Authority does not consent to the Supplier appointing any third party processor of Personal Data under this agreement.

20.6 Either party may, at any time on not less than 30 days' notice, revise this clause 20 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 replaced by attachment to this agreement).

## 21. Modern Slavery

21.1 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;



- (d) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;  
and
- (e) it shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Supplier's obligations under this clause 21. Such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.

21.2 Any breach of this clause 21 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Authority to terminate the Contract in accordance with clause 13.2.

## **22. Dispute Resolution**

22.1 Any dispute or difference arising out of or in connection with this Contract (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 22.

22.2 The parties shall each use reasonable endeavours to resolve a dispute by means of prompt, bona fide discussion at a managerial level appropriate to the dispute in question.

22.3 In the event that a dispute is not resolved within five (5) Business Days of it having been referred to a managerial level for discussion then either party may refer it to Chief Executive or equivalent officer of each party for resolution and the same shall meet for discussion within fifteen (15) Business Days thereafter or such longer period as the parties may agree.

## **23. Assignment and Sub-Contracting**

23.1 Subject to any express provision of this Contract, the Supplier shall not without the prior written consent of the Authority, assign all or any benefit, right or interest under this Contract or sub-contract any its obligations under this Contract.

23.2 Notwithstanding any sub-contracting permitted under this Contract, the Supplier shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

23.3 The Authority may at any time assign, novate or otherwise dispose of its rights and obligations either in whole or in part under the Contract.

## **24. Business Continuity**

24.1 The Supplier shall ensure that it is able to implement the provisions of the Business Continuity Plan at any time in accordance with its term.

24.2 Following a Force Majeure Event, the Supplier shall still be obliged to implement the Business Continuity Plan. If the Supplier suffers a Force Majeure Event that prevents or hinders the Supplier's performance of its obligations in connection with the Business Continuity Plan for

a continuous period of more than one (1) month, the Authority may terminate the Contract upon five (5) Business Days' written notice to the Supplier.

## **25. Notices**

- 25.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.
- 25.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25; 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 delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 25.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **26. Severance**

- 26.1 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 shall not affect the validity and enforceability of the rest of the Contract.

## **27. Waiver**

- 27.1 Failure by either party at any time or for any period to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract shall not:
- (a) constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Contract; nor
  - (b) affect the validity of the Contract or any part thereof or the right of the parties to enforce any provision in accordance with its terms.
- 27.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 24).

**28. No Partnership or Agency**

28.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**29. Entire Agreement**

29.1 The Contract and the Purchase Order constitute 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.

**30. Third party rights**

30.1 The parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

**31. Publicity**

31.1 Except with the prior written consent of the other party, which shall not be unreasonably withheld or delayed, neither party shall make any press announcement or publicise this Contract in any way.

**32. Conflict of Interest**

32.1 If either party becomes aware of any possible conflict of interest which may arise between the interests of the Authority and the Supplier, the party becoming aware of such information shall as soon as reasonably possible notify the other party and the parties shall discuss the potential conflict and both parties shall use all reasonable endeavours to find ways to eliminate or minimise the risk of such a conflict of interest arising and both parties shall take such steps as may be agreed to remove or avoid the cause of such conflict of interest.

**33. Variation**

33.1 No change to this Contract shall be valid unless made in writing and signed by a duly authorised representative of each party.

**34. Governing Law and Jurisdiction**

34.1 This Contract shall be governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the courts of England and Wales.

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