

## STANDARD CONDITIONS OF CONTRACT FOR SALE AND SUPPLY OF GOODS

### 1. Definitions

#### 1.1. In these conditions:

**“Authorised Representative”**; means the individual nominated by each party as its authorised representative for the purposes of this Contract.

**“Bribery Act”**; means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

**“Buyer”**; means the ISLE OF WIGHT COUNCIL of County Hall, High Street, Newport, Isle of Wight PO30 1UD

**“Contract”**; means the Order together with these conditions

**“Contractor”**; means the person, firm or company to whom the Order is addressed

**“Controller”**; as defined in the Data Protection Legislation

**“Data Protection Legislation”**; the UK Data Protection Legislation and any other European Union legislation relating to personal data 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) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party

**“Data Subject”**; as defined in the Data Protection Legislation.

**“EIRs”**; means 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

**“FOIA”**; the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**“Goods”**; means the items described in the Order.

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

**“Law”**; any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply

**“Necessary Consents”**; all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service

**“Order”**; means:

- (i) any invitation to tender; or

- (ii) any request for quotation; or
- (iii) any order placed; and
- (iv) the Contractors response to any invitation to tender, request for quotation or order placed by the Buyer

for the supply of services including all special conditions, specifications, patterns, plans, drawings, reports and other documents which are incorporated or referred to therein

**"Parties"**; means the Buyer and the Contractor

**"Personal Data"**; as defined in the Data Protection Legislation

**"Processor"**; as defined in the Data Protection Legislation.

**"Prohibited Act"**; the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree 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 Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Buyer
- (d) any activity, practice or conduct which would constitute one of the offences listed under condition (c), if such activity, practice or conduct had been carried out in the UK.

**"Request for Information"**; a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs

**"Special Conditions"**; means any conditions which are supplementary to these standard conditions of contract for the provision of Services and which are specified in the Order

**"UK Data Protection Legislation"**; all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**"Working Day"**; Monday to Friday, excluding any public holidays in England and Wales

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Words in the singular shall include the plural and vice versa.
- 1.6. A reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8. Where there is any conflict or inconsistency between these conditions of Contract and the Order, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.8.1. This Document being the Buyers Standard Condition or Contract for the Provision of Service
  - 1.8.2. Any Special Conditions
  - 1.8.3. The Order

## **2. Conditions of Purchase**

- 2.1. These conditions shall apply to all Orders for the purchase of Goods by the Buyer from the Contractor to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may purport to apply under any sales offer or similar document or in correspondence. These conditions together with the Order and any Special Conditions constitute the entire understanding between the Buyer and the Contractor with respect to the subject matter covered by the Order and supersede all previous agreements and understandings between the Parties
- 2.2. Dispatch or delivery of the Goods by the Contractor to the Buyer shall be deemed conclusive evidence of the Contractor's acceptance of these conditions
- 2.3. Any variation of these conditions shall be inapplicable unless agreed in writing by the Parties

## **3. The Goods**

- 3.1. The Contractor warrants that the Goods shall:
  - 3.1.1. correspond with any description specified in the Order
  - 3.1.2. be capable of any standard or performance specified in the Order or any literature supplied by the Contractor to the Buyer prior to the placing of the Order
  - 3.1.3. correspond with any sample provided or given by either party
  - 3.1.4. be reasonably fit for the purpose specified in the Order (if any) or for such other purpose such goods are ordinarily used

## **4. Delivery**

- 4.1. The Goods, properly packed and secured in such a manner as to reach their destination

in good condition under normal conditions of transport, shall be delivered by the Contractor at, or dispatched for delivery to, the place or places and in the manner specified in the Order

- 4.2. Arrangements for payment and return of returnable wooden packing cases skids, drums and other re-usable articles used for packaging the Goods will be as specified in the Order

## **5. Payment**

- 5.1. Payment of the price specified in the Order shall be made by the Buyer to the Contractor on such date or dates as may be specified in the Order or if not so specified shall be made within 20 Working Days of receipt of the appropriate VAT invoice, such invoice to be received no earlier than the date for the completion date of the Services
- 5.2. 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 condition 12. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the Parties
- 5.3. Subject to condition 5.2, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Contractor shall not suspend the supply of the Services if any payment is overdue
- 5.4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice. The Contractor shall indemnify the Buyer against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Buyer at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Contract.
- 5.5. The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Buyer pursuant to this Contract. Such records shall be retained for inspection by the Buyer for 6 (six) years from the end of the Contract Year to which the records relate
- 5.6. Wherever pursuant to the Order any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Order or under any other agreement or contract with the Buyer

## **6. Storage**

If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Contractor shall, if his storage facilities permit, store the Goods, safeguard them and take all reasonable steps to prevent their

deterioration until their actual delivery, and the Buyer shall be liable to the Contractor for the reasonable costs (including insurance) of so doing

## **7. Rejection**

- 7.1. The Buyer may by notice in writing to the Contractor given within 28 days or such other period as may be agreed after delivery, reject any Goods which are found not to be in accordance with the Order
- 7.2. The Buyer shall when giving notice of rejection specify the reasons therefor and shall thereafter return the rejected Goods to the Contractor at the Contractor's risk and expense. In such case, the Contractor shall within a Reasonable time replace such rejected Goods with Goods which are in all respects in accordance with the Order
- 7.3. Any money paid by the Buyer to the Contractor in respect of any rejected Goods not replaced by the Contractor within a reasonable time, together with any additional expenditure over and above the price specified in the Order reasonably incurred by the Buyer in obtaining other goods in replacement, shall be paid by the Contractor to the Buyer

## **8. Title**

Title in the Goods shall pass to the Buyer on delivery without prejudice to any right of rejection which may accrue to the Buyer under these conditions

## **9. Risk and Insurance**

- 9.1. All and any Goods shall be at the risk of the Contractor until such time as delivery has been completed and title has passed to the Buyer
- 9.2. The Contractor shall indemnify the Buyer in respect of any damage to the Buyer's property or premises and physical or other personal injury to the Buyer's employees or to members of the public or other persons occasioned during delivery of the Goods and for these purposes the Contractor shall maintain a public liability insurance policy with a minimum amount of third party insurance of ten million pounds (£10,000,000) for any one accident/number of accidents unlimited
- 9.3. The contents of this condition are expressly stated to be entirely without prejudice to any rights that might subsist between the Buyer, the Contractor and third parties at common law or otherwise

## **10. Time**

- 10.1. The Contractor shall deliver the Goods to the Buyer at the time(s) specified in the Order or as agreed by the Parties and in this event time shall be considered to be of the essence. If no time is specified for delivery and completion of the Goods then the Contractor shall deliver the Goods within a reasonable time of the receipt by the Contractor of the Order

- 10.2. If, owing to industrial disputes or other cause outside the Contractor's control, the Contractor is unable to deliver the Goods within the time specified then provided that the Contractor shall have given the Buyer notice in writing without delay of his intention to claim an extension of time the Buyer shall grant the Contractor such extension of time as may be reasonable
- 10.3. If the Goods or any portion thereof are not delivered within the time or times specified or any extension of such time or times and/or if the service or any portion thereof is not completed within the time or times specified or any extension of such time or times to the complete satisfaction of the Buyer, the Buyer shall be entitled to either:
- 10.3.1. determine the Order in respect of the Goods undelivered and of any other Goods already delivered under the Order which cannot be effectively and commercially used by reason of the non-delivery of the Goods undelivered as aforesaid. On such determination the Buyer shall be entitled:
- 10.3.1.1. to return to the Contractor at the Contractor's risk and expense any of the Goods already delivered but which cannot be effectively and commercially used as aforesaid and to recover from the Contractor any monies paid by the Buyer in respect of such Goods, and
- 10.3.1.2. to recover from the Contractor any additional expenditure reasonably incurred by the Buyer in obtaining other goods to replace those in respect of which the Order has been determined

## **11. Damage or Loss in Transit**

The Contractor will replace or (at the Buyer's request) repair, free of charge, any Goods that have been damaged or lost in transit and/or the Buyer shall give to the Contractor written notification of any such damage or loss if it comes to his attention within such time as will enable the Contractor to comply with the carrier's conditions of carriage, as affecting loss or damage in transit, or when delivery is made by the Contractor's own transport, within a reasonable time, the interpretation of what amounts to being a reasonable time herein being at the Buyer's discretion

## **12. Dispute Resolution**

- 12.1. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then the Parties shall follow the procedure set out in this condition:
- 12.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

12.1.2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Buyer's Chief Executive Officer and the Contractor's Chief Executive Officer who shall attempt in good faith to resolve it (or nominate a person to do so on their behalf); and

12.1.3. if the process outlined in condition 12.1.2 is unsuccessful then within 30 days of it being referred to the Chief Executive Officers or their nominees, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice

12.2. The commencement of mediation shall not prevent the Parties commencing or continuing court or arbitration proceedings in relation to the Dispute under condition 29 which condition shall apply at all times.

### **13. Guarantee**

13.1. If within a period of 12 months following delivery of the Goods ("the Guarantee Period") the Buyer gives notice in writing to the Contractor of any defect in the Goods which shall arise under proper use from faulty design (other than a design made, furnished or specified by the Buyer for which the Contractor has in writing disclaimed responsibility), materials or workmanship, then the Contractor shall with all possible speed replace or repair the Goods so as to remedy the defects without cost to the Buyer

13.2. The Buyer shall, as soon as practicable after discovering any such defect or failure, return the defective Goods or parts thereof to the Contractor at the Contractor's risk and expense unless it has been agreed between the Parties that the necessary replacement or repair shall be carried out by the Contractor on the Buyer's premises

### **14. Assignment or Sub-Contracting**

14.1. The Contractor shall not without the consent in writing of the Buyer assign or transfer the Order or any part thereof to any other person except as part of a company amalgamation or reconstruction

14.2. The Contractor shall not without the consent in writing of the Buyer sub-let the Order or any part thereof but this shall not prevent the Contractor sub-letting part of the Order to any company which is a member of the group to which the Contractor belongs or a company with whom the Contractor is associated (provided that the Contractor shall provide such evidence of proof as required by the Buyer). Any such consent shall not relieve the Contractor of any of his obligations under the Order

## **15. Bankruptcy/Liquidation etc.**

15.1. In the event of the Contractor becoming bankrupt or making a composition or arrangement with its creditors or having a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, or having an application made under the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof in respect of its company to the Court for the appointment of an administrator, or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, appointed or having possession taken by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the floating charge then in any and all of such eventualities the Buyer shall be at liberty:

15.1.1. to cancel the Order summarily by notice in writing without compensation to the Contractor, or

15.1.2. to give any receiver, liquidator, trustee or insolvency practitioner the option of carrying out the Order

PROVIDED THAT the exercise of the right under this condition shall be at the sole discretion of the Buyer and shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer

## **16. Force Majeure**

Neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations the Order and/or these conditions if such delay or failure arises from any cause or causes beyond the reasonable control of the Contractor, including, but not limited to, labour disputes, lightning, shortages of materials, rationing, utility or commitments failures, earthquakes, blockages, actions, restrictions, regulations or orders of any Government, agency or subdivision thereof

## **17. Infringement of Patents**

17.1. Where applicable the Contractor shall fully indemnify the Buyer against any action, claim, demand costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, registered design, trademark, or trade name protected in the United Kingdom by the use or sale of the Goods and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Contractor having followed a design or instruction furnished by the Buyer or to the use of



the Goods in a manner or for a purpose not reasonably to be inferred by the Contractor or disclosed to the Contractor prior to the making of the Contract

- 17.2. In the event of any claim being made or action brought against the Buyer arising out of the matters referred to in this condition the Contractor shall be promptly notified thereof and at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Buyer shall not, unless and until the Contractor shall have failed to take over the conduct of negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Buyer such reasonable security as shall from time to time be required by the Buyer to cover the amount ascertained or agreed estimated, as the case may be, of any compensation, damages, expenses and costs for which the Buyer may become liable. The Buyer shall, at the request of the Contractor, afford all available assistance for any such purpose and shall be repaid any expenses incurred in doing so
- 17.3. The Buyer on his part warrants that any design or instructions furnished or given by him shall not be such or cause the Contractor to infringe any letters patent, registered designs, trademarks or trade name in the performance of the Contract

## **18. Prevention or Bribery**

- 18.1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's personnel, have at any time prior to the commencement of the Contract:
- 18.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 18.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act
- 18.2. The Contractor shall not during the term of this Contract:
- 18.2.1. commit a Prohibited Act; and/or
  - 18.2.2. do or suffer anything to be done which would cause the Buyer or any of the Buyer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 18.3. The Contractor shall during the term of this Contract:
- 18.3.1. establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - 18.3.2. keep appropriate records of its compliance with its obligations under condition 18.3.1 and make such records available to the Buyer on request.

18.4. The Contractor shall immediately notify the Buyer in writing if it becomes aware of any breach of condition 18.1 and/or condition 18.2, or has reason to believe that it has or any of the Contractor's personnel have:

18.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

18.4.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

18.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

18.5. If the Contractor makes a notification to the Buyer pursuant to condition 18.4, the Contractor shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to audit any books, records and/or any other relevant documentation.

18.6. If the Contractor is in Default under condition 18.1 and/or condition 18.2, the Buyer may by notice:

18.6.1. require the Contractor to remove from performance of this Contract any Contractor's personnel whose acts or omissions have caused the Default; or

18.6.2. immediately terminate this Contract.

18.7. Any notice served by the Buyer under condition 18.6 shall specify the nature of the Prohibited Act, the identity of the party who the Buyer believes has committed the Prohibited Act and the action that the Buyer has elected to take (including, where relevant, the date on which this Contract shall terminate)

## **19. Compliance with Anti-Slavery and Human Trafficking Laws**

19.1 In performing its obligations under this Contract, the Contractor shall:

19.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

19.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

19.1.3 include in contracts with its direct subcontractors and suppliers' provisions which are at least as onerous as those set out in this condition 19.

19.1.4 notify the Buyer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

- 19.1.5 maintain a complete set of records to trace the supply chain of all Goods provided to the Buyer in connection with this Contract, and permit the Buyer and its third party representatives to inspect the Contractor's premises, records and to meet the Contractor's personnel to audit the Contractor's compliance with its obligations under this condition 19.
- 19.2 The Contractor represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 19.3 The Buyer may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this condition 19.

## **20. Data Processing and Data Protection**

- 20.1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This condition 20 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this condition 20, **Applicable Laws** means (for so long as and to the extent that they apply to the Contractor) the law of the European Union, the law of any member state of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 20.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Contractor is the Processor, unless otherwise specified in the Order. The Order sets out the scope, nature and purpose of processing by the Buyer, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 20.3. Without prejudice to the generality of condition 20.1, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.
- 20.4. Without prejudice to the generality of condition 20.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
- (a) process that Personal Data only on the written instructions of the Buyer (as set out in the Order), unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union (Applicable Laws) applicable to the Contractor to otherwise process the Personal Data. Where the Contractor is so required, it shall promptly notify the Buyer before processing the Personal Data, unless prohibited by the Applicable Laws;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Buyer, 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) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
    - (i) the Buyer or the Contractor has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective remedies;
    - (iii) the Contractor 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 Contractor complies with the reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data;
  - (d) notify the Buyer immediately if it receives:
    - (i) a request from a Data Subject to have access to that person's Personal Data;
    - (ii) a request to rectify, block or erase any Personal Data;
    - (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
  - (e) assist the Buyer in responding to any request from a Data Subject and in ensuring compliance with the Buyer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Buyer immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
  - (g) at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination or expiry of the Contract unless required by the Applicable Laws to store the Personal Data;
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this condition 20 and allow for audits by the Buyer or the Buyer's designated auditor;

- (i) indemnify the Buyer against any loss or damage suffered by the Buyer of its obligations under this condition 20.
- 20.5. The Contractor shall indemnify the Buyer against any losses, damages, cost or expenses incurred by the Buyer arising from, or in connection with any breach of the Contractor's obligations under this condition 20.
- 20.6. Where the Contractor intends to engage a sub-contractor and intends for that sub-contractor to process any Personal Data relating to this Contract, it shall:
- (a) notify the Buyer in writing of the intended processing by the sub-contractor;
  - (b) obtain prior written consent to the processing;
  - (c) ensure that any sub-contract imposes obligations on the sub-contractor to give effect to the terms set out in this condition 20.
- 20.7. Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this condition 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 incorporated by attachment to this Contract).
- 20.8. The provisions of this condition 20 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **21. Freedom of Information**

- 21.1. The Contractor acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
- 21.1.1. provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;
  - 21.1.2. transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 21.1.3. provide the Buyer with a copy of all Information belonging to the Buyer requested in the Request For Information which is in its possession or control in the form that the Buyer requires within 5 Working Days (or such other period as the Buyer may reasonably specify) of the Buyer's request for such Information; and
  - 21.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the Buyer.
- 21.2. The Contractor acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Contractor. The Buyer shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably

practical for it to do so but (notwithstanding any other provision in this Contract) the Buyer shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs

## **22. Confidentiality**

22.1. Subject to condition 22.2, the Parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

22.2. Condition 22.1 shall not apply to any disclosure of information:

22.2.1. required by any applicable law, provided that condition 21 shall apply to any disclosures required under the FOIA or the EIRs;

22.2.2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;

22.2.3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of condition 22.1;

22.2.4. by the Buyer of any document to which it is a party and which the Parties to this Contract have agreed contains no commercially sensitive information;

22.2.5. to enable a determination to be made under condition 12;

22.2.6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

22.2.7. by the Buyer to any other department, office or agency of the Government; and

22.2.8. by the Buyer relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure

22.3. On or before the expiry or termination of the Contract the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Buyer's employees, rate-payers or service users, are delivered up to the Buyer or securely destroyed

## **23. Indemnity**

The Contractor shall indemnify and keep indemnified the Buyer against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Buyer or its Representatives (excluding any Contractor's personnel)

## **24. Termination for Breach**

24.1. The following obligations are conditions of the Order and any breach of them shall be deemed a fundamental breach which shall determine the Order immediately and the rights and liabilities of the party not at fault shall then be determined

24.1.1. Failure on the part of the Contractor to observe any obligation(s) under the Order or these conditions

24.1.2. The levying of any distress or execution against the Contractor or the making by him of any composition or arrangement with creditors or being a company in bankruptcy/liquidation in accordance with the terms of condition 15

24.1.3. If any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

## **25. Termination on Notice**

25.1. This Contract may be terminated:

25.1.1. at any time and without notice by the agreement of both Parties; or

25.1.2. by the Buyer with immediate effect for reasons of convenience, by the Buyer giving written notice to the Contractor, in which case the Buyer shall pay the Contractor fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

## **26. Severance**

26.1. If any provision or part-provision of this 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 condition shall not affect the validity and enforceability of the rest of this Contract.

26.2. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision

26.3. If in the Buyer's reasonable opinion the effect of such a declaration is to defeat the original intention of the Parties the Buyer shall be entitled to terminate the Order by 14 days' written notice to the Contractor

## **27. Notice**

27.1. Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative 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); as detailed in the Order.

27.2. Any notice shall be deemed to have been received:

27.2.1. if delivered by hand, on signature of a delivery receipt;

27.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service

27.3. For the purpose of this condition 'writing' shall not include email.

## **28. Third Parties**

The Parties hereby declare that no term of the Contract or Order is intended by the Parties to confer a benefit on any third party (as defined by the Contracts (Right of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

## **29. Law and Jurisdiction**

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

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