

**STANDARD TERMS AND CONDITIONS FOR THE PURCHASE AND/OR HIRE OF  
GOODS/SERVICES BY LANCASTER CITY COUNCIL**

**(Edition Date: September 2021)**

**1. Interpretation**

**1.1** In these Terms:

**“Agreement”** means any written agreement between the Parties signed by authorised representatives of the Parties or signed by authorised agents on behalf of the Parties relating to the sale and purchase of the Goods and/or the hire of the Hire Goods and/or the supply and purchase of the Services;

**“Authority”** means Lancaster City Council of Town Hall, Dalton Square, Lancaster, LA1 1PJ;

**“Business Day”** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**“Contract”** means the contract for the sale and purchase of the Goods and/or the hire of the Hire Goods and/or the supply and purchase of the Services, which comprises the applicable Order, Specification, Agreement (if any) and these Terms;

**“Default”** means, in relation to sections 15 and 16 of these Terms, any breach of the obligations of the relevant Party (including without limitation abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

(a) in the case of the Authority, of its employees, servants, agents; or

(b) in the case of the Supplier, of its sub-contractors or any Supplier Personnel,

in connection with or in relation to this Contract and in respect of which such Party is liable to the other;

**“Deliverables”** means any documents, information, products and materials, which are supplied by the Supplier to the Authority in connection with or related to the Goods or Services or otherwise pursuant or related to the Contract;

**“Delivery Address”** means the delivery address that is stated in the Order or otherwise agreed by the Parties in writing;

**“Goods”** means the goods (including any instalment of the goods or any part of them) that are described in the Order and references in these Terms to Goods shall include Hire Goods unless stated or the context requires otherwise;

**“Hire Goods”** means any Goods which are described in the Order as being hired to/by the Authority (as opposed to being sold to and purchased by the Authority);

**“Order”** means the Authority’s purchase order to which these Terms are annexed, or any Agreement as may be applicable;

**“Parties”** means the Authority and the Supplier and **“Party”** means either of them;

**“Price”** means the price of the Goods and/or the charge for the Services;

**“Supplier”** means the person, firm or company so described in the Order;

**“Supplier Personnel”** means all persons employed by the Supplier to perform its obligations under the Agreement together with the Supplier’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;

**“Services”** means the services that are described in the Order;

**“Specification”** means any plans, drawings, data, requirements or other information relating to the Goods or Services either supplied by the Authority to the Supplier or (if applicable) agreed or accepted in writing by the Authority;

**“Terms”** means the standard purchasing terms and conditions that are set out in this document and any special terms agreed in writing between the Parties; and

**“Warranty Period”** means (a) (in the case of the Services and all Goods other than Hire Goods) whichever is longest of the following: (i) 12 (twelve) months after either the date on which delivery of the Goods or performance of the Services has been completed or (if later) the date of acceptance of the Goods or Services by the Authority (and such references to Goods and Services shall also include repaired Goods or replacement Goods or Services referred to in section 8.2.1); (ii) the duration of the Contract; or (iii) such other warranty period confirmed in writing by the Supplier or agreed by the Parties in writing or which the Supplier offers to any of its other customers in respect of the Goods or Services; and (b) (in the case of Hire Goods) the duration of the period of hire of Hire Goods to the Authority.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation. References herein to **“in writing”** shall include by email. References herein to **“sections”** are to sections of these Terms.

1.3 Where the words **“including”** or similar expressions are used in these Terms, they are deemed to have the words **“without limitation”** following them.

1.4 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.

## 2. **Basis of Supply**

2.1 The Order constitutes an offer by the Authority to purchase the Goods and/or hire the Hire Goods and/or purchase the Services subject to these Terms.

2.2 The Supplier must acknowledge receipt of the Order and confirm its unconditional acceptance of the Order and these Terms in writing within 7 (seven) days of the Order date, failing which the Authority reserves the right to withdraw the Order in writing at any time thereafter, whereupon the Order shall lapse and cease to be capable of being accepted by the Supplier. Subject to the previous sentence, if the Supplier delivers the Goods or performs the Services or carries out any work in relation to either of the foregoing, that shall be deemed to be conclusive evidence of the Supplier’s unconditional acceptance of the Order and these Terms.

2.3 Subject to section 2.4, unless expressly agreed otherwise in writing between authorised representatives of the Parties or authorised agents on behalf of the Parties, no variation to the Order or these Terms shall be binding and these Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Authority or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.4 If there is an Agreement, the terms and conditions of the Agreement shall apply to the Parties and form part of the Contract and, in the event of any conflict between the terms and conditions of the Agreement and these Terms, the terms and conditions of the Agreement shall prevail (except as may be expressly stated otherwise in the Agreement).

### **3. Nature and Specification of Goods and Services**

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order (including any instructions detailed therein) and in any applicable Specification.
- 3.2 Any Specification which is supplied by the Authority to the Supplier, or specifically produced by the Supplier for the Authority, together with the copyright, design rights and any other intellectual property rights in such Specification, shall be the exclusive property of the Authority. In consideration of the Price, the Supplier hereby assigns to the Authority, with full title guarantee and free from all third party rights, all such copyright, design rights and other intellectual property rights which may be owned by it. The Supplier shall not disclose to any third party or use any such Specification except as required for the purpose of the Contract.
- 3.3 The Supplier shall comply with all applicable laws, standards, regulations, statutory and other legal requirements (including any which are notified by the Authority to the Supplier and any relating to health and safety and the environment) concerning the manufacture, packaging, supply, delivery, storage and installation of the Goods and the performance of the Services and which may otherwise apply to the Supplier and/or the Supplier's activities in relation to the Contract.
- 3.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and the Services.
- 3.5 The Supplier shall not unreasonably refuse any request by the Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Authority with all facilities which are reasonably required for inspection and testing. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.6 If as a result of inspection or testing, the Authority is not reasonably satisfied that the Goods will comply in all respects with the Contract, and the Authority so informs the Supplier, the Supplier shall take such steps as are necessary to ensure compliance.
- 3.7 The Goods shall be marked in accordance with the Authority's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.
- 3.8 Where the Supplier is providing Hire Goods, the Supplier shall hire the Hire Goods to the Authority throughout the period of hire described in the Order or, if sooner, until termination of the Contract or cancellation of the Order in accordance with these Terms, whereupon the Supplier shall promptly arrange for the Hire Goods to be collected from the Delivery Address at its own cost.

### **4. Price of the Goods and Services**

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Authority subject to receipt of a valid value added tax invoice);
- 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties or levies other than value added tax; and
- 4.1.3 inclusive of all travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the

Supplier for the performance of the Services, and for the cost of any materials, unless otherwise agreed in the Order or in writing between the Parties.

- 4.2 No increase in the Price may be made without the Authority's prior written consent.
- 4.3 The Authority shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase which is customarily granted by the Supplier.

## 5. **Payment**

- 5.1 The Supplier may invoice the Authority on or at any time after delivery of the Goods or performance of the Services has been completed or (in any case) at such other time as may be stated in the Order. In any event, the Authority must receive the Supplier's invoice promptly and in any case no later than 3 (three) months after the date on which the Supplier first became entitled to raise the invoice and each invoice must be a valid VAT invoice and accurately quote the Authority's valid Order number, which is specified in the Order, and must not be dated earlier than the date on which it is raised and must comply with any other invoicing conditions, requirements or instructions that are stated in the Order and include or be accompanied by such other supporting information as the Authority may request, failing which the Authority shall not be required to pay such invoice.
- 5.2 To be considered valid, an invoice must: (i) include the relevant documentation which is referred to in section 6.3; (ii) be an accurate invoice which has been properly raised by the Supplier; and (iii) comply with the requirements set out in section 5.1.
- 5.3 Where the Supplier submits an invoice (including an electronic invoice) to the Authority in accordance with sections 5.1 and 5.2, the Authority will consider and verify that invoice in a timely fashion.
- 5.4 The Authority may set off against the Price any sums which are owed to the Authority by the Supplier, including the Price for any Goods which are returned pursuant to section 8.2.1.
- 5.5 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 (thirty) days from the date on which the Authority has determined that the invoice is valid and undisputed. The Authority shall accept and process an electronic invoice submitted by the Supplier where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard referred to in the Public Procurement (Electronic Invoices etc.) Regulations 2019 (*SI 2019/624*).
- 5.6 Where the Authority fails to comply with section 5.5 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of section 5.5 after a reasonable time has passed.
- 5.7 If the Authority fails to make a payment due to the Supplier under the Contract by the due date, then the Authority shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this section 5.7 will accrue each day at 4% (four per cent) a year above the Bank of England's base rate from time to time, but at 4% (four per cent) a year for any period when that base rate is below 0% (zero per cent).

## 6. **Delivery and Acceptance**

- 6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date(s) or within the period(s) stated in the Order, in either case during the Authority's usual business hours or as otherwise agreed in writing between the Parties.
- 6.2 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

- 6.3 A packing list/delivery advice note quoting the Authority's valid Order number and containing such other details as the Authority may require must accompany each delivery or instalment of the Goods and must be displayed prominently. An accurate signed timesheet or other documentary evidence or confirmation of completion of the Services, detailing the nature of the Services and the times and locations at which the Services were performed, quoting the Authority's valid Order number and containing such other details as the Authority may require must be supplied to the Authority upon or immediately after completion of the Services.
- 6.4 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.5 The Authority may reject any Goods which are delivered or Services performed which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until the Authority has had a reasonable time with the circumstances to inspect and/or test them following delivery or performance thereof and the Authority has confirmed its acceptance in writing (such acceptance not to be unreasonably withheld or delayed).
- 6.6 The Supplier shall supply the Authority in good time with any instructions or other information that is required to enable the Authority to accept delivery of the Goods and performance of the Services.
- 6.7 The Authority shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Authority.
- 6.8 The Authority will not accept any deliveries of Goods or performance of Services in excess of the amount ordered unless previously agreed in writing by the Authority.
- 6.9 If the Supplier fails to deliver the Goods or perform the Services on the due date in accordance with the Contract then, without limiting any other remedy and without any liability, the Authority shall be entitled to:
- 6.9.1 terminate the Contract and cancel any Order in whole or in part pursuant to section 9.2.1 and require the Supplier to refund to the Authority on demand any payments which have been previously made by the Authority in respect of any cancelled Order and (where applicable) collect from the Authority at the Supplier's cost any Goods which have already been received by the Authority pursuant to such Order;
  - 6.9.2 refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;
  - 6.9.3 recover from the Supplier any expenditure which has been reasonably incurred by the Authority in remedying the Supplier's failure including, if applicable, obtaining the Goods or Services in substitution from another supplier;
  - 6.9.4 claim damages for any additional costs, losses or expenses which have been incurred by the Authority which are in any way attributable to the Supplier's failure;
  - 6.9.5 require the Supplier, without charge to the Authority, to carry out such additional work and take such steps as is necessary to correct the Supplier's failure and ensure future compliance by the Supplier; and
  - 6.9.6 deduct from the Price or (if the Authority has paid the Price) to claim from the Supplier the greater of:
    - 6.9.6.1 5% (five per cent) of the Price for every consecutive period of 7 (seven) days' delay, up to a maximum of 25% (twenty-five per cent) as liquidated damages payable on demand for the delay. The Parties agree that any such amount deducted or claimed by the Authority from the Supplier in accordance with this section 6.9.6.1 represents a genuine and reasonable pre-estimate of, and is not out of proportion to, the Authority's

legitimate interests for, any such losses, damages, costs and claims which may be suffered by the Authority; or

6.9.6.2 where the actual losses incurred by the Authority exceed the 25% (twenty-five per cent) cap in section 6.9.6.1, such greater amount as fully compensates the Authority for any losses, damages, costs and claims which it may suffer as a result of the Supplier's failure to deliver the Goods or perform the Services on the due date in accordance with the Contract.

6.10 The Supplier shall notify the Authority immediately in writing of any delay to the delivery of the Goods and/or Services, setting out the reasons for such delay. This notification shall not relieve the Supplier of its duties in respect of meeting the agreed delivery dates.

6.11 In supplying the Services, the Supplier shall not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission on which it relies, and the Supplier shall provide all equipment, tools, vehicles and other items required to provide the Services.

6.12 The Supplier shall notify the Authority in writing immediately upon the occurrence of a change of control of the Supplier.

## 7. Risk and Title

7.1 Subject to section 7.3, risk of damage to or loss of the Goods shall pass to the Authority on completion of delivery to the Authority including completion of off-loading in accordance with the Contract.

7.2 Subject to section 7.3, title in and to the Goods shall pass to the Authority on delivery, unless payment for the Goods is made prior to delivery, in which case it shall pass to the Authority once payment has been made.

7.3 Risk of damage to or loss of the Hire Goods and title in and to the Hire Goods shall not pass to the Authority.

7.4 The Supplier shall be responsible for insuring the Hire Goods at all times and for insuring the Goods for the period prior to risk of damage to or loss of the Goods passing to the Authority in respect of all damage thereto and loss thereof at its full replacement value.

## 8. Warranties and Liability

8.1 The Supplier warrants to the Authority that:

8.1.1 throughout the Warranty Period, the Goods and Services will:

8.1.1.1 be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier at or before the time the Order is placed or otherwise agreed in writing by the Parties;

8.1.1.2 be free from defects in design, material and workmanship;

8.1.1.3 correspond with the Order, these Terms and any relevant Specification or sample; and

8.1.1.4 comply with all laws, standards, regulations, statutory and other legal requirements relating to the sale, hire or supply thereof;

8.1.2 throughout the Warranty Period, all information which is supplied by the Supplier to the Authority in connection with or related to the Goods and Services or otherwise

pursuant or related to the Contract shall be and remain true, accurate and complete;  
and

- 8.1.3 the Services will be performed by appropriately qualified and trained personnel, with due skill, care and diligence in accordance with best industry practice and to such high standard of quality as it is reasonable for the Authority to expect from a competent and experienced contractor in all the circumstances.
- 8.2 If any Goods or Services are not supplied or performed in accordance with the Contract including the warranties in section 8.1 then, notwithstanding any prior acceptance thereof by the Authority and without limiting any other remedy and without any liability, the Authority shall be entitled to:
  - 8.2.1 require the Supplier to repair such Goods or to supply replacement Goods or Services in accordance with the Contract at the Supplier's cost within 7 (seven) days of being requested to do so by the Authority (in which case, such repaired Goods or replacement Goods or Services shall be subject to the warranties referred to in section 8.1) or the Authority shall be entitled to return such Goods to the Supplier at the Supplier's cost, in which case, the Supplier shall, within 7 (seven) days of receipt of such returned Goods, repay to the Authority the Price paid by the Authority for such Goods and the costs which have been incurred by the Authority in returning such Goods to the Supplier in such amount as the Authority shall advise the Supplier; or
  - 8.2.2 exercise the rights described in section 6.9.1 (whether or not the Authority has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services).
- 8.3 The Supplier shall indemnify the Authority in full against all claims, actions, liabilities, losses, damages, costs and expenses (including legal expenses) made, taken or awarded against or incurred or paid by the Authority as a result of or in connection with:
  - 8.3.1 any breach of any warranty given by the Supplier in relation to the Goods or the Services;
  - 8.3.2 any claim that the Goods or Deliverables infringe, or their importation, use or resale, infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Authority;
  - 8.3.3 any act or omission (including any breach, negligence, failure or delay) of the Supplier or its employees, agents or sub-contractors in connection with the Goods and Services or the performance of the Supplier's obligations under the Contract;
  - 8.3.4 any accident caused by or involving the Supplier; and/or
  - 8.3.5 any persons who are employed or engaged by the Supplier or its agents or sub-contractors in connection with the Contract.
- 8.4 Neither Party may benefit from the limitations and exclusions set out in this section in respect of any liability arising from its deliberate default.
- 8.5 Nothing in the Contract shall limit the Supplier's liability under sections 8.3 and 11.10 of these Terms.
- 8.6 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
  - (i) death or personal injury caused by negligence;
  - (ii) fraud or fraudulent misrepresentation; and
  - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.7 Subject to section 8.5, neither Party shall be liable to the other for any: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and/or (vii) indirect or consequential loss.

## 9. **Cancellation and Termination**

9.1 The Authority may for any reason cancel an Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance, whereupon all work being performed by the Supplier in respect thereof shall be immediately discontinued and the Authority's sole liability shall be to pay to the Supplier a fair and reasonable proportion of the Price for the Goods or Services in respect of which the Authority has exercised its right of cancellation, less the Supplier's net saving of costs arising from cancellation (which the Supplier shall, on request, demonstrate in reasonable detail to the Authority's reasonable satisfaction) and not including any loss of anticipated profits or any consequential loss, to compensate for the Supplier's work-in-progress as at the date of cancellation.

9.2 The Authority may terminate the Contract and cancel any Order, without limiting any other remedy and without any liability by giving notice to the Supplier at any time if:

9.2.1 the Supplier breaches any of the provisions of the Contract and either such breach is material and/or incapable of being remedied (which shall include any breach of sections 10.1, 20.6 or 20.7) or the Supplier fails to remedy such breach within 14 (fourteen) days of it being notified of the breach or if the Supplier repeatedly breaches any of the provisions of the Contract in such a manner as to reasonably justify the Authority's opinion that the Supplier's conduct is inconsistent with it having the intention or ability to comply with or give effect to the provisions of the Contract;

9.2.2 the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation;

9.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier;

9.2.4 anything occurs with respect to the Supplier in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in sections 9.2.2 and 9.2.3;

9.2.5 there is a change of control of the Supplier;

9.2.6 in the reasonable opinion of the Authority the conduct of the Supplier has or is reasonably likely to bring the Authority's reputation into serious disrepute;

9.2.7 the Supplier ceases, or threatens to cease, to carry on business;

9.2.8 the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply; or

9.2.9 the Authority reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

9.3 The termination of the Contract or cancellation of any Order, however arising, shall be without prejudice to the rights of the Authority and liabilities of the Supplier which have accrued prior to termination or cancellation. The provisions of these Terms, which expressly or impliedly have effect after termination or cancellation, shall continue to be enforceable notwithstanding termination or cancellation.



## 10. Confidentiality and Publicity

- 10.1 The Supplier shall at all times keep in strict confidence and shall use only for the purpose of performing its obligations to the Authority all technical or commercial know-how, data, information, materials, specifications, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Authority and any other confidential information concerning the Authority's business, finances, affairs, products, services, suppliers or customers, which the Supplier may obtain. The Supplier shall restrict disclosure and use of such confidential material and information: (i) to such of its employees and permitted agents or sub-contractors as need to know the same for the purpose of performing the Supplier's obligations to the Authority and shall ensure that such employees, agents or sub-contractors are subject to equivalent obligations of confidentiality as bind the Supplier; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.2 The Supplier shall not make or procure or permit any other person to make any press or public announcement or publicity concerning any aspect of the Contract without the Authority's prior written consent.

## 11. Data Protection

- 11.1 In this section 11, the following definitions shall apply:

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) ("**UK 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 the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party. Definitions in these Terms shall, so far as the context permits and unless otherwise stated, the meanings given to them in the Data Protection Legislation.

**Domestic Law:** means the law of the United Kingdom or a part of the United Kingdom.

**Personal Data:** personal data (as defined in the Data Protection Legislation) which is processed by the Supplier on behalf of the Authority pursuant to the Contract.

- 11.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This section 11 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 11.3 The Supplier acknowledges that, in relation to its obligations under the Contract, it shall act as a data processor on behalf of the Authority in relation to any Personal Data. Processing of Personal Data by the data processor under the Contract shall be restricted to the duration of the term of the Contract and, in respect of its subject matter, nature and purpose, to such processing activities and purposes as the data processor is reasonably required to undertake in connection with its performance under the Contract. The types of Personal Data and categories of data subject shall be restricted to such data concerning such data subjects as the data controller provides to the data processor in connection with the Parties' performance under the Contract. Without prejudice to the generality of section 11.2, to the extent that the Supplier processes any Personal Data pursuant to the Contract, the Supplier warrants that it shall:
- 11.3.1 process that Personal Data only on the documented written instructions of the Authority unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Authority;
- 11.3.2 procure that its directors, officers, and employees shall, comply with all applicable obligations and requirements under the Data Protection Legislation;

- 11.3.3 not transfer or disclose Personal Data to any third party without the Authority's prior written consent;
- 11.3.4 keep a record of any processing of Personal Data it carries out on behalf of the Authority in accordance with the requirements of and to demonstrate compliance with the Data Protection Legislation and shall co-operate with the Authority in any audits and inspections to monitor such compliance;
- 11.3.5 promptly comply with any request from the Authority requiring the Supplier to amend, transfer or delete the Personal Data unless required by Domestic Law to store the Personal Data;
- 11.3.6 put in place and maintain appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of Personal Data and against the 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);
- 11.3.7 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 11.3.8 not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - 11.3.8.1 the Supplier has provided appropriate safeguards (as defined in Article 46.2 of the GDPR) in relation to the transfer, and can demonstrate this to the reasonable satisfaction of the Authority;
  - 11.3.8.2 the data subjects whose Personal Data will be transferred have enforceable rights and effective legal remedies;
  - 11.3.8.3 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
  - 11.3.8.4 the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and
- 11.3.9 assist the Authority 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.
- 11.4 The Supplier will not use a third party processor ("**Sub-Processor**") without prior specific or general written authorisation from the Authority.
- 11.5 If the Authority gives prior specific or general written authorisation for the Supplier to use a Sub-Processor, the Supplier:
  - 11.5.1 must notify the Authority of any changes to Sub-Processors made under prior general written authorisation and must allow the Authority a reasonable time to object to those changes;

- 11.5.2 must impose such contract terms on the Sub-Processor as are required by the Data Protection Legislation, especially but not exclusively, those contract terms which are required under Article 28.3 of the GDPR; and
  - 11.5.3 will remain fully liable to the Authority for any acts or omissions of the Sub-Processor.
- 11.6 The Supplier shall:
- 11.6.1 retain all information required to demonstrate that the Supplier and the Authority have met their obligations under the Data Protection Legislation;
  - 11.6.2 submit and contribute to audits and inspections carried out by the Authority or a third party appointed by the Authority to carry out such audits or inspections. The Authority will endeavour to provide reasonable written notice of the date of inspections or audits;
  - 11.6.3 inform the Authority immediately if the Supplier believes or suspects that it has been given an instruction that does not comply with the Data Protection Legislation; and
  - 11.6.4 notify the Authority immediately if the Supplier becomes aware of or reasonably suspects a personal data breach.
- 11.7 On termination or expiry of the Contract, the Supplier shall, at the choice of the Authority, delete or return to the Authority all Personal Data and copies thereof it has within its power, ownership or control, and the Supplier shall ensure that any such return or deletion is carried out securely and in accordance with current best practice.
- 11.8 The Supplier shall not knowingly or negligently do or omit to do anything which places the Authority in breach of its obligations under the Data Protection Legislation. The Supplier shall indemnify the Authority, to the fullest extent permitted by law, against any claim, loss, damage, expense or fine arising as a result of a breach by the Supplier of this section 11, or otherwise arising under the Data Protection Legislation which is caused by any action or omission the Supplier or its personnel, agents or other authorised individuals.

## 12. Freedom of Information

- 12.1 In this section 12 and in section 13, the following definitions apply:

**Commercially Sensitive Information:** information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated in writing to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Environmental Information Regulations:** 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.

**Information:** has the meaning given under section 84 of FOIA.

**Request for Information:** a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

- 12.2 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- 12.2.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - 12.2.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 (two) Business Days of receipt;
  - 12.2.3 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 (five) Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 12.2.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 12.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 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 Agreement) the Authority 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.

### 13. **Transparency**

- 13.1 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 13.2 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

### 14. **Modern Slavery**

- 14.1 In performing its obligations under the Contract, the Supplier shall:
  - 14.1.1 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
  - 14.1.2 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;
  - 14.1.3 include in contracts with its direct sub-contractors and suppliers, provisions which are at least as onerous as those set out in this section 14;
  - 14.1.4 notify the Authority 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; and
  - 14.1.5 maintain a complete set of records to trace the supply chain of all Goods, Hire Goods and Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this section 14.

14.2 The Supplier represents and warrants that 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.

14.3 The Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this section 14.

## 15. **Anti-Bribery**

15.1 In this section 15, the following definitions apply:

### **Prohibited Act:**

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any 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) an offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; and/or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); and

(d) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

15.2 The Supplier represents and warrants that neither it, nor any Supplier Personnel:

15.2.1 has committed a Prohibited Act;

15.2.2 has been or is subject of any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

15.2.3 has been or is 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 other government contracts on the grounds of a Prohibited Act.

15.3 The Supplier shall promptly notify the Authority if, at any time during the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in section 15.2 at the relevant time.

15.4 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Contract:

15.4.1 not commit a Prohibited Act;

15.4.2 not do, suffer or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

- 15.4.3 comply with the Authority's Anti-bribery and Anti-Corruption Policy as updated from time to time;
- 15.4.4 notify the Authority (in writing) if it becomes aware of any breach of sections 15.4.1 or 15.4.2 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage.
- 15.5 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with the Contract and the steps taken to comply with its obligations under section 15.4.
- 15.6 The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with section 16.
- 15.7 If the Supplier is in Default under this section 15, the Authority may by written notice:
  - 15.7.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
  - 15.7.2 immediately terminate this Contract.
- 15.8 Any notice served by the Authority under section 15.7 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).
- 16. **Audit**
- 16.1 In this section 16, the following definitions apply:

**Financial Report(s):** any contract report to be provided by the Supplier to the Authority.
- 16.2 The Supplier shall keep and maintain until 6 (six) years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including:
  - 16.2.1 the Goods and/or Services provided under it;
  - 16.2.2 all expenditure reimbursed by the Authority; and
  - 16.2.3 all payments made by the Authority.
- 16.3 The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be required in connection with the Contract.
- 16.4 If:
  - 16.4.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable;
  - 16.4.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - 16.4.3 the Authority has overpaid on any Price, the Supplier shall pay to the Authority:
    - 16.4.3.1 the amount overpaid;
    - 16.4.3.2 interest on the amount overpaid at the rate of 4% (four per cent) a year above the Bank of England's base rate from time to time, but at 4% (four

per cent) a year for any period when that base rate is below 0% (zero per cent), accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and

16.4.3.3 the reasonable costs incurred by the Authority in undertaking the audit, alternatively the Authority may exercise its right to deduct such amount from the Price if it prefers; and

16.4.4 the Authority has underpaid on any Price, the Supplier shall not be entitled to increase the Price paid or payable by the Authority.

## 17. Dispute Resolution

17.1 In this section 17, the following definitions apply:

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Supplier.

17.2 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**") then the Parties shall follow the procedure set out in this section:

17.2.1 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;

17.2.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 14 (fourteen) days of service (or such other period to which the authority consents) of the Dispute Notice, the Dispute shall be referred to the Authority's relevant director and the Supplier's Managing Director (or equivalent) who shall attempt in good faith to resolve it; and

17.2.3 if the Authority's relevant director and the Supplier's Managing Director (or equivalent) are for any reason unable to resolve the Dispute within 30 (thirty) days of it being referred to them service (or such other period to which the Authority consents), the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing ("**ADR notice**") to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 (thirty) days after the date of the ADR notice.

17.3 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute.

## 18. Equality

18.1 The Supplier shall (and shall procure that the Supplier Personnel shall):

18.1.1 perform its obligations under this Contract (including those in relation to the Good and/or Services) in accordance with:

18.1.1.1 all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

18.1.1.2 the Authority's Equality and Diversity Policy as provided to the Supplier from time to time; and

- 18.1.1.3 any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
- 18.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
- 18.1.3 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## 19. Insurance

During the term of the Contract and for a period of 6 (six) years thereafter, the Supplier shall maintain in force, with a reputable insurance company such insurances, to cover the liabilities that may arise under or in connection with the Contract (or if such other insurances and levels of cover are expressly set out in the Specification, these insurances), and shall produce to the Authority on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## 20. Force Majeure

- 20.1 "**Force Majeure Event**" means any circumstance not within a party's reasonable control including, without limitation: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (vi) collapse of buildings, fire, explosion or accident; (vii) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this section, or companies in the same group as that Party); and (viii) interruption or failure of utility service.
- 20.2 The Supplier shall not be able to rely upon this clause where the Force Majeure Event was within its reasonable contemplation at the time the parties entered the Contract.
- 20.3 Provided it has complied with section 20.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 20.4 The Affected Party shall:
  - 20.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 72 (seventy-two) hours from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
  - 20.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 20.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 (thirty) days, the Party not affected by the



Force Majeure Event may terminate the Contract by giving 7 (seven) days' written notice to the Affected Party.

## **21. Intellectual Property Rights**

- 21.1 In consideration of the payments due to the Supplier pursuant to the Contract, the Supplier hereby assigns to the Authority by virtue of and upon entering into the Contract (where appropriate, by way of present assignment of rights which arise in the future), with full title guarantee and free from all third party rights, all rights including intellectual property rights (if any) in all Goods, Services and Deliverables which are designed, developed or created for the Authority pursuant to or in connection with the Contract and the products and results of the Services.
- 21.2 If and to the extent that it is not possible or reasonably practicable for the Authority to exercise its rights under the Contract or to make full use of the Goods, Services or Deliverables without the use of any rights including intellectual property rights of the Supplier, other than those referred to in section 21.1, in consideration of the payments due to the Supplier pursuant to the Contract, the Supplier hereby grants to the Authority a non-exclusive, irrevocable, royalty-free and perpetual licence to use such rights as the Authority may require for that purpose.
- 21.3 All materials provided by the Authority to the Supplier in relation to the supply of Goods, Services and Deliverables are the exclusive property of the Authority.

## **22. General**

- 22.1 The Contract and each Order is personal to the Supplier and the Supplier may not assign, sub-contract or otherwise delegate any of its rights or obligations under the Contract or any Order to any third party without the Authority's prior written consent. The Authority may assign, sub-contract or otherwise delegate any of its rights or obligations under the Contract or any Order to any third party.
- 22.2 No waiver by the Authority of any breach of the Contract by the Supplier shall be binding unless confirmed in writing by an authorised representative of the Authority or an authorised agent on behalf of the Authority nor shall it be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.3 If any provision of these Terms or the Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms or the Contract and the remainder of the provision in question shall not be affected. If any provision or part-provision of these Terms or the Contract is deemed deleted under this section 21.3, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.
- 22.4 No one other than a Party to the Contract and their permitted assignees shall have any right to enforce any of its terms.
- 22.5 Without prejudice and in addition to the generality of section 3.3 and the provisions of any specific clause dealing with the same, the Supplier shall comply with all applicable laws, statutes, regulations, codes, standards and policies from time to time in force relating to anti-bribery, anti-corruption, anti-slavery, anti-human trafficking, data protection, the reporting and payment of tax, the prevention of tax evasion and the prevention of facilitating tax evasion, including the Bribery Act 2010, the Modern Slavery Act 2015, the Data Protection Act 2018, GDPR and the Criminal Finances Act 2017 and the Supplier shall at all times maintain and enforce its own adequate and compliant policies and procedures related to such matters and the Supplier shall not engage in any activity, practice or conduct which may constitute or cause a breach of, or an offence under, any laws, statutes, regulations, codes, standards, policies or procedures by it or any third party and the Supplier shall promptly notify the Authority in writing

if it becomes aware of, or has any concerns regarding, any such potential or actual non-compliance, breach or offence.

- 22.6 Without prejudice and in addition to the provisions of any specific clause dealing with the same, the Supplier shall comply with all applicable policies and procedures (as the same may be amended, updated or replaced from time to time) which are relevant to the Supplier, the Goods and/or Services (including policies and procedures related to health and safety, the environment, security and any of the subject matter referred to in section 22.5) and which are either made available or accessible to the Supplier or notified or provided to the Supplier from time to time or on request.
- 22.7 The Supplier will use all reasonable endeavours to employ or use local labour or personnel (with reference to the location of the Delivery Address) in connection with the supply of Goods and/or Services to the Authority wherever it is reasonably practicable and lawful to do so.
- 22.8 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address if specified from time to time. Any such notice or communication shall be deemed to have been received (if by hand) when delivered or (if by pre-paid first-class post or other next working day delivery service) 48 (forty-eight) hours after posting. In the case of the Authority, the notice should be marked for the attention of the relevant director.
- 22.9 Notwithstanding any other provisions, the Authority's rights under the Contract are in addition to (not in place of) all statutory rights implied in favour of the Authority.
- 22.10 The Contract shall be governed by the laws of England, and the Supplier agrees to submit to the exclusive jurisdiction of the English courts.