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NESO STANDARD TERMS FOR THE SUPPLY OF DELIVERABLES (JULY 2025)

1 DEFINITIONS AND INTERPRETATION

1.1 In the Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the following meanings:

Applicable Law: all applicable laws, statutes, regulations, codes directives or requirements of the UK Parliament or other Relevant Authority, or any applicable judgment of a relevant court (in each case as may be amended after the date of the Contract, and together with any new Applicable Law after the date of the Contract);

Business Day: any day except Saturday, Sunday or a public holiday in England and Wales;

Client: National Energy System Operator Limited, incorporated and registered in England & Wales with company number 11014226 whose registered address is at St Catherine's Lodge, Bearwood Road, Sindlesham, Wokingham, Berkshire, RG41 5BN;

Client Background IPR: any IPR owned by or licensed to the Client before the date of the Contract and/or arising on or after such date except in connection with the Deliverables;

Client Data: means any data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium supplied to the Supplier (or any Supplier Party) by or on behalf of the Client, or which the Supplier (or any Supplier Party) is required to collect, generate, process, store or transmit pursuant to the Contract (or otherwise receives in connection with providing the Deliverables), including all modifications, additions and developments made to any of those items;

Client Information Systems: is defined in condition 7.2;

Client IPR: is defined in condition 8.1(a);

Client Policy Requirements: those policies of the Client that are notified in writing to the Supplier from time to time[, including [the "Supplier Code of Conduct", as updated or replaced from time to time;]

Client Premises: any premises of the Client where any Deliverables are provided;

Conditions: these Standard Terms for the Supply of Deliverables;

Confidential Information: is defined in condition 11.1;

Conflict of Interest: a conflict between the financial or personal interests or duties of the Supplier or a Supplier Party and the duties owed to the Client under this Contract, in the reasonable opinion of the Client;

Contract: is defined in condition 2.1;

Controller: has the meaning given under applicable Data Protection Law;

Data Protection Law: means any Applicable Law (or any other relevant law) relating to the processing, privacy, and use of Personal Data, as applicable to the Parties, including:

- (a) in the United Kingdom:
 - (i) the UK GDPR (as defined in the Data Protection Act 2018) and the Data Protection Act 2018, and/or any supplementary or replacement laws and regulation; and/or
 - (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and any laws or regulations implementing Directive 2002/58/EC (e-Privacy Directive);
- (b) in member states of the European Union (EU): the General Data Protection Regulation (EU) 2016/679 (GDPR) and the e-Privacy Directive, and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with any of them;
- (c) any other laws relating to the processing, privacy and use of Personal Data in any other territory as applicable to any Party; and
- (d) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority (as defined in the GDPR);

Day: a calendar day;

Deliverables: the provision of the Services and/or the Goods (as applicable) and all ancillary obligations under the Contract;

Deliverables IPR: is defined in condition 8.1(a);

Delivery: the delivery of the Goods to the Delivery Location which shall be deemed to have occurred as described at condition 4.7;

Delivery Location: the location stipulated by the Client;

End Date: the date of expiry or termination of the Contract;

Force Majeure Event: (a) an act of God; (b) war, (c) insurrection, riot, civil commotion, act or threat of terrorism; (d) lightning, earthquake, fire, flood, storm or extreme weather condition; or (e) any other event or circumstance to the extent it is beyond the reasonable control of the relevant Party (but excluding any impact of Coronavirus (severe acute respiratory syndrome coronavirus 2) and excluding any strikes or industrial action at the Supplier's premises);

Good Industry Practice: using standards, practices and operating procedures conforming to Applicable Law and exercising that degree of skill, diligence, care, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in a similar type of undertaking;

Goods: any goods described in the Purchase Order or otherwise agreed in writing between the Parties;

Government Buying Standard: the standards set out at <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>, as updated or replaced from time to time;

Insolvent: where a Party: (a) gives notice under section 84 Insolvency Act 1986 of, or proposes or passes a resolution for, its winding up; (b) has a winding-up order made or a notice of striking off filed in respect of it, has an administration order or has a notice of appointment of an administrator filed in respect of it at any court, or applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (c) proposes, makes or is subject to: (i) a company voluntary arrangement; (ii) a composition with its creditors generally; (iii) an application to a court of competent jurisdiction for protection from its creditors generally; or (iv) a scheme of arrangement under Part 26 Companies Act 2006, or commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors; (d) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income, ceases to trade; or (e) is the subject of anything analogous to any of the foregoing under the laws of any applicable jurisdiction;

Invoice: is defined in condition 9.1;

IPR: all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trademarks, domain names, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the UK and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

Liability: Losses arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any obligations under the Contract;

Losses: costs (including legal costs on a full indemnity basis and costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, proceedings and judgments, in each case whether direct or indirect, but subject to condition 13.2;

Notice: a written notice given under condition 19.1 and to **Notify** means to serve a Notice;

OfGem: the Office of Gas and Electricity Markets;

Party: the Client or the Supplier, together being the **Parties**;

Permitted Purposes: a Party performing its obligations and exercising its rights under the Contract, or receiving the benefit of the other Party's performance of its obligations (including in respect of the Client, any use of the Deliverables it deems appropriate);

Personal Data: has the meaning given under applicable Data Protection Law;

Prices: the prices set out in the Purchase Order;

Process (including Processed, Processes and Processing): has the meaning given under applicable Data Protection Law;

Procurement Law: the Procurement Act 2023 and the Procurement Regulation 2024, as may be amended from time to time;

Prohibited Act: (a) the offering, promising, giving, accepting or soliciting of an advantage, reward or gratuity as an inducement for an action in connection with the Deliverables which is illegal, unethical or a breach of trust; (b) abusing any entrusted power for private gain in

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connection with the Contract or any other contract with the Client;
(c) the establishment of accounting practices and corporate entity structures that implicitly or explicitly result in tax evasion or facilitate tax evasion as defined in the Criminal Finance Act 2017; (d) engaging in any activity, practice or conduct outside the UK that would, if carried out in the UK, constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015; (e) failing to comply with Relevant Laws, any act or thing which constitutes or may constitute an offence under Relevant Laws or cause the Client to breach any Relevant Laws;

Protected Characteristic: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership;

Purchase Order: the Client's written order for the purchase of Deliverables from the Supplier;

Request for Information: a request or apparent request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 relating to the Contract and/or the Deliverables;

Relevant Authority: any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, officer or public or statutory person of the Government of the UK (including, without limitation, OfGem and the Information Commissioner's Office);

Relevant Laws: Applicable Laws relating to (a) anti-bribery and/or anti-corruption, including the Bribery Act and the US Foreign Corrupt Practices Act 1977; (b) anti-slavery, compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015; (c) anti-tax evasion (including the Criminal Finance Act 2017);

Replacement Supplier: any person that provides goods or services in replacement of any of the Deliverables;

Services: any services described in the Purchase Order or otherwise agreed in writing between the Parties;

Specification: any written specifications for the relevant Deliverables provided to the Client by the Supplier;

Supplier: the supplier identified in the Purchase Order;

Supplier Background IPR: any IPR owned by or licenced to the Supplier before the date of the Contract and/or which arises (or in the case of a licence commences) on or after such date other than in the course of or in connection with the Deliverables;

Supplier Equipment: any equipment, tools or other tangible items used by any Supplier Party to provide the Deliverables;

Supplier Party: the Supplier, any sub-contractor of the Supplier of any tier and any Supplier Personnel;

Supplier Personnel: any officer or employee engaged by a Supplier Party who assists in providing the Deliverables;

Term: is defined in condition 2.4; and

Warranty Period: means twelve (12) months following the satisfactory completion or delivery of the Deliverables or as otherwise stated in the Specification.

1.2 In these Conditions unless the context otherwise requires, references to:

- (a) a "condition" is to a particular condition of these Conditions;
- (b) any statute or statutory provision will include any related subordinate legislation, and such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced from time to time;
- (c) the singular include the plural and vice versa;
- (d) a **person** includes a natural person, corporate, statutory, governmental or unincorporated body (whether or not having separate legal personality);
- (e) a **company** shall include any company, corporation or other body corporate, whenever and however incorporated or established; and
- (f) a **Party** or the **Parties** include a reference to its or their successors and permitted assigns.

1.3 In these Conditions, headings shall not affect the interpretation of these Conditions and any words following the words **include**, **includes**, **including**, in particular or any similar words or expressions will be construed without limitation and will not limit the meaning of the words preceding them.

2 CONTRACT FORMATION, COMMENCEMENT AND TERM

2.1 A contract for the supply of Deliverables by the Supplier will be formed upon the Client issuing the Purchase Order accepting the Supplier's

quotation. The contract comprises the following (**Contract**) (and any conflict, shall be resolved in this order):

- (a) these Conditions (except if the Client provides an alternative form of contract for signature by the Client and the Supplier, in which case such contract shall apply);
- (b) the Purchase Order (and any Specification); and
- (c) the Supplier's quotation.

2.2 The Contract constitutes the entire agreement and understanding of the Parties in respect of its subject matter (and supersedes any previous agreement in respect of the same), notwithstanding anything to the contrary in any standard terms and conditions of the Supplier or in any quotation, advice, note, invoice, acknowledgement, letter or any other documents issued or sent by the Supplier.

2.3 In entering into the Contract, neither Party shall have any remedy (either in contract or tort) in respect of any statement, representation or warranty which is not expressly set out in the Contract (without limiting or excluding any liability for fraud or fraudulent misrepresentation).

2.4 The Contract shall commence on the date of the Purchase Order and shall continue until satisfactory completion of the Deliverables, subject to earlier termination in accordance with the Contract (**Term**).

2.5 The Contract does not confer any exclusivity on the Supplier.

3 DELIVERABLES

3.1 The Supplier shall provide (or procure the provision of) the Deliverables in accordance with:

- (a) the Specification, the other terms of the Contract and any reasonable instructions of the Client from time to time; and
- (b) Good Industry Practice, Applicable Law, any permissions, consents or approvals required from a third party, and so as to ensure that the Deliverables are fit for any purpose expressly or impliedly made known by the Client to the Supplier.

3.2 The Supplier shall:

- (a) comply with the Client Policy Requirements in relation to the Contract and the provision of the Deliverables;
- (b) provide (or procure the provision of) the Deliverables in co-operation with, and minimising disruption to, the Client and not by its act or omission cause the Client to lose any licence or consent required to carry on its business, or otherwise embarrass the Client or bring them into disrepute;
- (c) promptly provide all information and assistance in relation to the Deliverables reasonably requested by the Client; and
- (d) allocate sufficient resources and Supplier Personnel to provide the Deliverables, using efficient business processes.

3.3 Supplier Equipment shall remain at the Supplier's sole risk, including when on Client Premises.

3.4 The Supplier shall provide the Deliverables on or before the date specified in the Purchase Order or as the Client specifies in writing. Time for provision of the Deliverables will be of the essence.

4 THE GOODS

4.1 The Supplier shall ensure that Goods:

- (a) are new and are of satisfactory quality within the meaning of the Sale of Goods Act 1979, are fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect the Client relies on the Supplier's skill and judgement and shall remain so for the Warranty Period;
- (b) correspond with their description and meet the Specification, and are free from defects in design, materials and workmanship;
- (c) comply with all Applicable Laws, and are so formulated, designed, constructed, finished and packaged as to be safe and without risk to health; and
- (d) where the Goods are the subject to a Government Buying Standard, comply with that standard. [Sustainable procurement: the Government Buying Standards \(GBS\) - GOV.UK](#)

4.2 The Supplier shall deliver the quantity and description of the Goods as set out in the Purchase Order and the Specification.

4.3 The Client may Notify the Supplier at any time before Delivery of the Goods varying the quantity or type of the Goods ordered, the Delivery date or address, or the Specification. If any such variation results in an increase in the Supplier's costs of performing, or the time required for performance of the Contract, the Parties will agree an equitable adjustment to the Price, Delivery schedule or both.

4.4 The Supplier may not deliver the Goods by separate instalments without the Client's prior written consent. If the Client gives such consent, the Supplier shall invoice the Price for each instalment

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separately in accordance with condition 9.4 and the Client may exercise its rights and remedies (whether under these Conditions or otherwise) in respect of the relevant instalment or the whole Contract.

- 4.5 The Client will be entitled to inspect and test the Goods at any time before Delivery. The Supplier shall permit the Client, its officers, employees, agents and sub-contractors to enter upon the Supplier's premises, and shall procure permission for such persons to enter upon any relevant third party premises, to carry out such inspection and testing and shall provide them with all facilities reasonably required. If, following such inspection or testing, the Client gives written notice to the Supplier that it is not satisfied that the Goods will comply with the Contract, the Supplier shall take all steps necessary to ensure compliance. No such inspection or testing will reduce or otherwise affect the Supplier's obligations under the Contract.
- 4.6 The Supplier shall ensure that the Goods are packaged and carried in a manner consistent with any instructions detailed within the Specification, and in any event so as to reach the Delivery Location undamaged and in good condition, and using packaging that is suitable for storage, in each case at the Supplier's cost.
- 4.7 The Supplier shall deliver the Goods to the Delivery Location on the date and at such time of day as specified by the Client, or where no time is specified, during the Client's working hours as confirmed by the Client or Applicable Law. The Supplier shall be responsible for offloading the Goods from the delivery vehicle in accordance with any applicable Client site procedures and Delivery of the Goods will be deemed to have occurred when the Goods have been off-loaded and stacked at the Delivery Location.
- 4.8 The Supplier shall ensure that the Goods:
- (a) are legibly marked in accordance with the Specification and also legibly marked with the applicable batch number/code (meaning a number/code that identifies the goods from the same production run);
 - (b) contain such markings as are required by Applicable Law to enable them to be used for the purposes identified or reasonably inferred from the Specification;
 - (c) are not marked with any name, badge or mark used by the Client (unless expressly requested otherwise), and are clearly and permanently marked with the manufacturer's name, trademark or distinguishing mark unless otherwise required as part of the Specification; and
 - (d) where the Supplier is not the manufacturer, without infringing third Parties' rights, clearly and permanently marked as having been supplied by the Supplier to the Client.
- 4.9 Risk in the Goods shall pass to the Client on Delivery. Title in the Goods or any part thereof shall pass to the Client on Delivery or on payment by the Client (whichever is earlier) but the risk or damage or loss of the Goods shall pass to the Client on Delivery. The passing of title shall not prejudice the Client's right to reject defective Goods or any other rights of the Client under the Contract or Applicable Law.
- 4.10 The Supplier shall transfer title in the Goods to the Client with full title guarantee, free of all charges, liens, mortgages and encumbrances.
- 4.11 Where title in any of the Goods passes to the Client before Delivery, the Supplier shall ensure (at no cost to the Client) that such Goods:
- (a) shall be clearly identified and marked by the Supplier as being the property of the Client clearly displaying the name of the Client or in such manner as the Client may require;
 - (b) are stored separately from any other goods of any third party in such a way that they remain readily identifiable as the Client's property; and
 - (c) are at all times maintained in satisfactory condition.

5 WARRANTY PERIOD

- 5.1 If during the Warranty Period any of the Deliverables do not conform with the Contract, the Client may (without prejudice to conditions 5.3, 5.5 and any other rights under the Contract or at law) Notify the Supplier of the same, and the Supplier shall (at its cost) and at the Client's option either:
- (a) promptly, within not more than eight (8) Days (or as specified in the Client's Notice) repair or replace (and collect) the relevant Deliverables, and/or as applicable re-perform the relevant Deliverables; or
 - (b) provide a refund proportionate to the value of the Prices in respect of the relevant Deliverables, promptly, and in any event within a period of thirty (30) Days from receipt of the Client's Notice.
- 5.2 If the Supplier fails to comply with the Client's Notice, the Client may remedy or cause to be remedied any deficiency at the Supplier's sole cost and expense, including any costs for removing the defective

Deliverables, testing and installing the repaired and/or replacement Deliverables.

- 5.3 If due to the Client's operational requirements, or because of an emergency, the Client remedies (or causes to be remedied) any defect in the Deliverables itself (including repairing or replacing any Deliverables), then without prejudice to its other rights and remedies the Client shall be entitled to recover from the Supplier all Liability incurred in remedying such Deliverables (and provided the steps taken by the Client are in accordance with Good Industry Practice, such steps shall not affect or reduce the Supplier's Liability under condition 5.1).
- 5.4 The Supplier shall provide all Deliverables with the benefit of any manufacturer's guarantees, warranties and indemnities relating to the Deliverables. Where any such guarantees, warranties and indemnities may not be assigned, the Supplier shall hold them on trust for the Client and shall enforce them in accordance with any reasonable directions notified by the Client from time to time to the Supplier.
- 5.5 A breach of this condition 5 by the Supplier (or any Supplier Party) will be a material breach of the Contract.
- 5.6 This condition 5 shall apply to any repaired, re-performed or replacement Deliverables and in each case a new Warranty Period shall apply to the relevant repaired, re-performed or replacement Deliverables.
- 5.7 The Supplier shall not be liable under condition 5 to the extent that a defect in relation to the Deliverables is caused by fair wear and tear or the failure by the Client to follow the Supplier's reasonable instructions relating to the use of the Deliverables or due to the Client modifying the Deliverables without the Supplier's approval.

6 SUPPLIER PERSONNEL AND CLIENT POLICY REQUIREMENTS

- 6.1 The Supplier shall ensure all Supplier Personnel are:
- (a) appropriately qualified, trained and experienced; and
 - (b) vetted in accordance with the Client Policy Requirements.
- 6.2 The Supplier shall indemnify the Client and any Replacement Supplier from and against all employment claims or Losses incurred, suffered or paid by the Client or Replacement Supplier in relation to any employment rights or contract of employment (or termination thereof) of any employee or former employee of the Supplier or a subcontractor that is claimed or deemed to have effect as between:
- (a) Client or any Replacement Supplier; and
 - (b) that individual, under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
- 6.3 If the Client reasonably believes that any Supplier Personnel are unsuitable to undertake work in respect of the Contract, it may refuse to admit the personnel to Client Premises, and/or direct the Supplier not to use the personnel in providing the Deliverables.
- 6.4 Where required by the Client, the Supplier shall support the Client in fulfilling its duty under section 149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:
- (a) eliminate discrimination, harassment or victimisation of any kind; and
 - (b) advance equality of opportunity and good relations between those with a Protected Characteristic and those who do not share it.
- 6.5 The Supplier shall not, and shall ensure that its sub-contractors shall not, discriminate in the engagement of their workers on the basis of Protected Characteristics.

7 ACCESS TO PREMISES AND SYSTEMS

- 7.1 Neither the Supplier nor any Supplier Personnel shall be entitled to access the Client Premises or any part of the Client Premises without the Client's prior written consent. The Supplier shall ensure that, at all times, any Supplier Personnel attending Client Premises comply with Client Policy Requirements and onsite regulations specified by the Client, including, without limitation, a verification check on the Supplier Personnel's identity, and confirmation of their legal right to work.
- 7.2 Subject to condition 7.3, neither the Supplier nor any Supplier Personnel shall access the Client's information systems, including without limitation, intranet, email, document management systems, operational management systems, cloud hosting sites or any other systems processing information which is confidential to the Client (**Client Information Systems**), or have access to any financial, commercial or other confidential data or personal data not already publicly available relating to the Client, its employees, customers or suppliers.
- 7.3 If access to Client Information Systems is required in order to provide any services or Deliverables, the Supplier shall inform the Client in writing of this fact and shall not access the Client Information Systems

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until the Client provides its written consent and the Supplier has fully complied with the Client Policy Requirements.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 For the purposes of the Contract, IPR shall be owned as follows:
- (a) the Client shall own Client Background IPR and any IPR in Client Data (together being **Client IPR**), and any IPR which comes into existence in the course of providing the Deliverables (**Deliverables IPR**), and such rights shall vest in the Client absolutely from the time of their creation;
 - (b) the Supplier shall own Supplier Background IPR, and such rights shall vest in the Supplier absolutely from the time of their creation.
- 8.2 The Supplier shall (and procure that each Supplier Party shall) grant to the Client a perpetual, irrevocable, non-exclusive, world-wide, royalty-free licence (and a right to sublicense to its subcontractor) to use, copy, translate and amend Supplier Background IPR (and Deliverables IPR, to the extent condition 8.1 is not effective to assign legal title to the Client) for the Permitted Purposes, in each case in any software, documentation, spreadsheets, data or other materials provided to the Client by or on behalf of the Supplier (or any other Supplier Party) in the course of providing the Deliverables.
- 8.3 Except to the extent that an infringement arises directly from a Party modifying the relevant IPR without the other Party's written consent:
- (a) the Supplier shall indemnify each Client Party and/or Replacement Supplier against any Liability, in each case arising out of or in connection with any claim that the use by that party of all or any part of the Deliverables, Deliverables IPR and/or Supplier Background IPR infringes the IPR of that third party or of another person; and
 - (b) the Client shall indemnify the Supplier against any Liability arising out of or in connection with any claim that the use by the Supplier in accordance with the Contract of all or any part of the Client IPR infringes the IPR of that third party or of another person.

9 PRICE AND PAYMENT

- 9.1 Subject to the Supplier performing its obligations under the Contract and providing an invoice which complies with conditions 9.3 and 9.4 (**Invoice**), the Client shall pay the Prices to the Supplier.
- 9.2 The Supplier shall provide an Invoice for the Deliverables provided in a month on or after the first Business Day following the end of that month (but no later than the last Business Day of that month).
- 9.3 The Supplier shall create and submit invoices via the Client's online purchase to pay system or any replacement system notified by the Client from time to time.
- 9.4 The Supplier shall submit sufficient details in accordance with condition 9.3 to ensure each invoice is a valid VAT invoice and contains the following information (and such supporting information as the Client reasonably requires):
- (a) the Supplier's name and address; and
 - (b) the Purchase Order number, the total of the Prices and the basis of calculation, and a brief description of the Deliverables provided.
- 9.5 Subject to conditions 9.6 and 9.10, each Invoice (plus applicable VAT) will be payable by the Client on or before the date thirty (30) Days following the date the Client receives the Invoice, in pounds sterling by BACS transfer to the Supplier's nominated UK bank account.
- 9.6 Notwithstanding receiving an Invoice, the Client may (without limiting its other rights or remedies) suspend payment of the Prices to the extent provision of the Deliverables is disrupted.
- 9.7 Pending resolution of any dispute or query the Client may withhold the disputed or queried payment but shall pay the remaining part.
- 9.8 Payment made by or on the Client's behalf will not constitute acceptance by the Client of any Deliverables or prejudice any rights or remedies of the Client.
- 9.9 Unless otherwise stated, Prices exclude VAT, which, subject to a valid VAT invoice will be payable at the rate prescribed by Applicable Law.
- 9.10 The Client may set off any liability of the Supplier to the Client against any liability of the Client to the Supplier under the Contract or any other contract between any Client Party and the Supplier.
- 9.11 A Party may charge interest on any sum due but not paid on or before the due date on a daily basis at 4% per annum above the Barclays Bank plc base lending rate from time to time from the due date until the date of payment (being a substantial remedy regarding the Late Payment of Commercial Debts (Interest) Act 1998).

10 GDPR AND INFORMATION SECURITY

- 10.1 In relation to the Processing of Personal Data under the Contract, the Parties acknowledge and agree that:
- (a) the Supplier and the Client act in the capacity of independent Controllers and each are separately responsible for compliance with Data Protection Law;
 - (b) the Personal Data shall be limited to business contact Personal Data necessary to enable the Supplier to provide to the Client the Deliverables as set out in the Contract and any Purchase Order which shall include business contact details of employees and those working for or on behalf of the Parties such as names, business addresses and other contact details (email and telephone); and
 - (c) where it is necessary to Process Personal Data for additional purposes or to Process additional Personal Data other than as set out in this condition 10.1 above, the Parties agree to enter into a separate Data Processing Agreement which, when agreed, shall form an exhibit to the Contract.

11 CONFIDENTIALITY

- 11.1 **Confidential Information** means, subject to condition 11.3 and condition 11.4, the terms of the Contract (and any related discussions or documents) and any information (whether written, oral, in electronic form or in any other media) disclosed in connection with the Contract whether before, on or after the date of the Contract.
- 11.2 Each Party shall, subject to conditions 11.3 and 11.4: (a) keep the other Party's Confidential Information secret and only disclose it as permitted by this condition 11; (b) use the other Party's Confidential Information solely for the Permitted Purposes; and (c) keep the Confidential Information safe and secure using security measures reflecting Good Industry Practice and at least as stringent as it uses to protect its own confidential information.
- 11.3 Confidential Information may be disclosed:
- (a) subject to condition 11.4 by either Party to its professional advisers for Permitted Purposes, provided that the Party procures that the recipient will not do or omit to do anything which would constitute a breach by the Party of this condition 11;
 - (b) by either Party to the extent required by Applicable Law or by any Relevant Authority, including in relation to the Client, as required by the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (having, where reasonably possible, given Notice to, and consulted with, the other before such disclosure);
 - (c) by the Client to any Relevant Authority or auditor or a Replacement Supplier, pursuant to any licence granted under condition 8.2 and/or to any potential buyer of the Client's business (whether in whole or part) and its nominated advisors.
- 11.4 Each Party's obligations under this condition will not extend to Confidential Information (except for information referred to in condition 11.3(b)) which:
- (a) the other Party agrees in writing is not confidential; or
 - (b) at the time of disclosure was in the public domain, or the disclosing Party can reasonably prove comes from a third party who is free to make it available to the recipient.
- 11.5 The Supplier shall not use the Client's names, logos or trade marks on any of its products or services, or publicise the existence or terms of the Contract without the Client's prior written consent.
- 11.6 The Client shall be entitled to use any of the Supplier's names, logos or trade marks on any of its products or services, and/or publicise the existence or terms of the Contract.

12 FREEDOM OF INFORMATION

- 12.1 The Supplier must inform the Client within 48 hours if it receives a Request for Information.
- 12.2 Within the timescales required by the Client, the Supplier must give the Client full co-operation and information needed so the Client can comply with any Request for Information.
- 12.3 The Client may consult the Supplier to help it decide whether to publish information under in response to a Request for Information. However, the final decision on whether to disclose information and the extent, content and format of any disclosure is the Client's decision.

13 LIABILITY AND INSURANCE

- 13.1 Subject to conditions 13.2, 13.3 and 13.5, each Party's maximum aggregate Liability to the other Party shall be limited to 100% of the aggregate Prices under the Contract assuming full performance by the Supplier, or such other amount as specified in the Purchase Order.

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- 13.2 Neither Party will have any Liability to the other Party for any indirect or consequential loss or damage (including loss of profit) which arises out of or in connection with the Contract, subject always to condition 13.3, and provided that this shall not limit the Supplier's Liability in respect of the following:
- (a) costs of conduct of indemnity claims or any compensation or interest paid by the Client to a third party;
 - (b) the costs incurred by the Client in reconstituting or reloading lost or corrupted data;
 - (c) Liability incurred by the Client arising out of or in connection with any third party claim against the Client due to the Supplier's act or omission, including any fine or penalty incurred by any Client Party pursuant to Applicable Law and any costs incurred by the Client Party in defending any related proceedings; and
 - (d) the additional cost of procuring replacement Deliverables and any reasonable additional operational and/or administrative costs (including management time) and expenses incurred by the Client.
- 13.3 Neither Party restricts or excludes any Liability to the other:
- (a) for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable;
 - (b) for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - (c) under any terms implied into the Contract by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or
 - (d) any Liability to the extent it cannot be limited or excluded by Applicable Law;
 - (e) the Supplier's Liability under conditions 7.1, 7.2, 10.1 or 11.2; or
 - (f) the Supplier's Liability under any indemnity contained in the Contract, or for a deliberate breach of the Contract.
- 13.4 If a Party is (or reasonably expects to be) subject to any claim made or threatened by a third party, the Party shall, as soon as reasonably practicable, Notify the other Party, giving reasonable detail of the facts and amount of the claim, and:
- (a) the indemnified Party shall not settle or compromise a Claim without notifying the other Party of the amount of the likely settlement or compromise, giving the other Party a reasonable time to consider the notification and seeking to consult with them about that settlement or compromise; and
 - (b) if required by the Client in writing, the Supplier will delegate the exclusive conduct of any legal proceedings in respect of the Claim to the Client.
- 13.5 Each Party shall use all reasonable endeavours to mitigate Losses suffered in connection with the Contract, including any Losses for which it is entitled to be indemnified by the other Party.
- 13.6 The Supplier shall maintain in force insurance policies during the Term and in respect of those insurances provided on a 'claims made' basis for six (6) years after completion of the Deliverables (or if applicable, the date of termination of the Contract), being such policies as required by Applicable Law, and:
- (a) employers' liability insurance in respect of Supplier Personnel of at least ten million pounds (£10m) per occurrence or series of occurrences arising from any one event or the minimum required by Applicable Law (if greater);
 - (b) general third party liability (including product liability) insurance with a combined bodily injury and property damage limit of at least ten million pounds (£10m) per occurrence or series of occurrences arising from any one event or such other sum as may be specified by the Client; and
 - (c) where the Deliverables include the provision of any advice, design, specification or professional services professional indemnity insurance with a limit of at least one million pounds (£1m) per claim and in the annual aggregate.
- 13.7 The Supplier shall, in relation to each of the required insurances:
- (a) effect such insurance with reputable underwriters;
 - (b) comply with all requirements of the relevant insurers, and Notify the Client as soon as reasonably practicable if it is (or may be) unable to comply with any insurance requirement or if a required insurance is cancelled or materially changes;
 - (c) pay all premiums due and bear all excesses, deductibles and/or franchises;
 - (d) with the exception of professional indemnity insurance, ensure that all required insurances contain an indemnity to principal clause; and
- (e) provide evidence of insurance to the Client within ten (10) Days of its request, and on the renewal anniversary of each insurance.
- 14 EXPIRY AND TERMINATION**
- 14.1 If the Supplier: (a) commits an irremediable material breach of the Contract; (b) commits a material breach of the Contract which is remediable, but is not remedied within fourteen (14) Days of the Client's Notice detailing the breach and requiring it to be remedied; (c) is Insolvent; and/or (d) was at the date of the Contract or subsequently becomes, an excluded or excludable supplier (as those terms are defined in the Procurement Law) or has its name entered on the debarment list provided for under the Procurement Law, the Client may terminate the Contract immediately by Notice to the Supplier.
- 14.2 The Client may terminate the Contract for convenience immediately by twenty (20) Days' Notice to the Supplier at any time, subject to paying the Supplier fair and reasonable compensation for work-in-progress, excluding loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential Losses
- 14.3 Expiry or termination of the Contract shall not affect:
- (a) conditions 5.1, 5.4, 6.2, 7.1, 8.2, 8.3(a), 11, 12, 16, 18.2(c) and 20.3 which shall continue in force, together with any other provisions which expressly or impliedly continue to have effect after the End Date; and
 - (b) any accrued rights or liabilities as at the End Date.
- 14.4 With effect from the End Date, the Supplier shall:
- (a) repay to the Client any Prices paid in advance in respect of Deliverables not provided by the Supplier as at the End Date;
 - (b) if requested to do so by the Client, destroy or permanently erase all documents and all records (in any media) held by it or on its behalf that use, concern or are based on any of the Client's Confidential Information (except for information the Supplier must retain to comply with any Applicable Law, or for insurance, accounting or taxation purposes); and
 - (c) for a reasonable period prior provide such assistance, information and advice as the Client reasonably requires to enable the Client to ensure a smooth transition of the supply of the Deliverables to the Client or any Replacement Supplier.
- 15 FORCE MAJEURE**
- 15.1 A Party will not be in breach of the Contract or be liable to the other Party for a failure or delay in performance to the extent arising due to a Force Majeure Event.
- 15.2 If a Force Majeure Event affects the Supplier, it shall:
- (a) promptly upon becoming aware of the Force Majeure Event Notify the Client giving details of the nature, extent and anticipated duration and impact of the Force Majeure Event; and
 - (b) use reasonable endeavours to mitigate the effects of the Force Majeure Event.
- 15.3 Unless otherwise agreed in writing between the Parties, if a Force Majeure Event which relieves a Party from liability under condition 15.1 continues for a period of more than thirty (30) Days, the Client may terminate the Contract by giving Notice to the Supplier.
- 16 PROHIBITED ACTS**
- 16.1 The Supplier warrants that in relation to the Contract each Supplier Party:
- (a) has not and shall not commit a Prohibited Act;
 - (b) shall comply with Relevant Laws, and maintain and comply with policies and procedures to ensure compliance with Relevant Laws and the Client Policy Requirements; and
 - (c) shall not engage in any activity, practice or conduct which constitutes an offence under Relevant Laws (or would do so if carried out in the UK).
- 16.2 If the Supplier becomes aware of or suspects any Supplier Party has committed or attempted to commit a Prohibited Act, it shall take action to stop it and shall immediately Notify the Client.
- 16.3 If the Client has reasonable grounds to believe that there has been a breach of this condition 16.1, 16.2 or 16.3, the Supplier shall comply with any reasonable request of the Client in investigating such breach including, without limitation, giving access to the Supplier's premises and records.
- 16.4 The Client may terminate the Contract immediately by giving Notice to the Supplier if the Supplier is in breach of condition 16.1.
- 16.5 The Supplier shall indemnify all Client Parties against any Liability arising from or relating to the Supplier's breach of this condition 16.

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17 CONFLICTS OF INTEREST

- 17.1 The Supplier must take action to ensure that neither the Supplier nor any Supplier Party are placed in the position of an actual or potential Conflict of Interest.
- 17.2 The Supplier must promptly notify and provide details to the Client if a Conflict of Interest happens or is expected to happen.
- 17.3 The Client may terminate the Contract immediately by giving Notice to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

18 RECORDS AND AUDITS

- 18.1 The Supplier shall maintain accurate and auditable records relevant to the Contract, calculation of the Prices and the provision of the Deliverables in accordance with Good Industry Practice until six (6) years after the End Date, or such longer period as required by Applicable Law.
- 18.2 During such period the Supplier shall:
 - (a) promptly on request from time to time, provide copies of any records to the Client and allow the records to be copied to or examined or inspected by the Client and any Relevant Authority or Replacement Supplier; and
 - (b) permit Client Parties and Relevant Authorities access on demand during normal business hours to the Supplier premises and to any Supplier Personnel, systems and relevant records as may be reasonably required in order to: (i) fulfil any request of a Relevant Authority or to allow the Client to comply with Applicable Law; (ii) confirm that each Supplier Party is complying with the Client Policy Requirements, the Contract and Applicable Laws; and/or
 - (c) confirm that the Supplier's systems protect the confidentiality and security of data.

19 NOTICES

- 19.1 Subject to condition 19.2, any notice or other communication given under or in connection with the Contract must be in writing and:
 - (a) sent to the relevant Party's address by delivery service providing proof of delivery, in which case service shall be deemed to have occurred at 9am on the second Day after the date of posting; or
 - (b) personally delivered to or left at the relevant Party's address, in which case service shall be deemed to have occurred at the time the notice or communication is delivered to or left at that Party's address if between 9am - 5pm on a Business Day (and if not, at 9am the next Business Day); or
 - (c) sent by e-mail to the relevant Party's e-mail address, in which case service shall be deemed to have occurred at the time of sending, except that if an automatic electronic notification is received by the sender informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office, that e-mail will be deemed not to have been served.

The address, e-mail address and representative for the Client will be specified in the Purchase Order or otherwise Notified to the Supplier.

- 19.2 Condition 19.1(c) will not apply to the service of any document in relation to legal proceedings or any Notice under condition 13.4 or 16.2. Such documents shall be addressed by post to, "St Catherine's Lodge, Bearwood Road, Sindlesham, Wokingham, Berkshire, RG41 5BN and marked for the attention of [the Client's Head of Legal].

20 GENERAL

- 20.1 **Disputes:** representatives of the Parties shall attempt to resolve any dispute in relation to the Contract by negotiation, failing which the Parties will attempt to settle it by mediation in accordance with a reputable mediation and alternative dispute resolution body's procedure (e.g. CEDR). Unless otherwise agreed between the Parties, the mediator will be nominated by the mediation body. No Party may commence any court proceedings in relation to any dispute until it has attempted to settle the dispute by negotiation and mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, unless the right to issue proceedings or the reputation of either Party would be prejudiced by a delay.
- 20.2 **Inadequacy of Damages:** without prejudice to the Client's other rights or remedies, the Supplier acknowledges that damages alone would not be an adequate remedy for any breach of the Contract by the Supplier. Accordingly, the Client shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Contract.
- 20.3 **No Waiver:** failure to exercise a right or remedy under the Contract or the law shall not constitute a waiver of the right or remedy or other

rights or remedies. Any waiver of any right or remedy will only be valid if written and signed by the Party giving it and only for the purpose for which it was given.

- 20.4 **No Variation:** a variation to the Contract will not have effect unless it is in writing and signed by the Parties' authorised representatives.
- 20.5 **No Agency:** nothing in the Contract is intended to or shall create a partnership, relationship of principal and agent, or joint venture between the Parties, or authorise a Party to bind the other Party.
- 20.6 **Third Party Rights:** No other person or third party shall have rights to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20.7 **Assignment and Sub-Contracting:** the Supplier shall not assign, subcontract, novate, transfer, charge or deal in any other manner with any of its rights under the Contract without the Client's prior written consent. No subcontracting by the Supplier will relieve the Supplier from performance of its obligations. The Client may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under the Contract to any Client Party.
- 20.8 **Supply Chain Visibility:** the Client may require the Supplier to provide, in respect of any sub-contractor of the Supplier of any tier, details of their name, contact details and details of the intermediate goods that sub-contractor provides or services that sub-contractor provides.
- 20.9 **Costs:** each Party shall bear its own costs in performing the Contract. The Prices are the only monies payable to the Supplier and are inclusive of all costs and expenses incurred by the Supplier including tariffs, duties, travel, accommodation and subsistence.
- 20.10 **Invalidity:** if any Contract term is found by any court to be illegal, or unenforceable, such term will be deemed to be severed from the Contract, and the remainder of the Contract will continue in full force and effect.
- 20.11 **Remedies not Exclusive:** the Client's rights and remedies under the Contract are not exclusive of any rights provided by law.
- 20.12 **Joint and Several Liability:** if the Supplier is a joint venture, consortium or other grouping, these persons shall be jointly and severally liable to the Client for performing the Contract;
- 20.13 **Further Assurance:** each Party shall at its own cost execute all such documents and take all steps as the other Party reasonably requests from time to time in order to give full effect to the Contract;
- 20.14 **Governing Law and Jurisdiction:** the Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction to determine any dispute relating to the same.