

# Terms and conditions of business

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## **Interpretation**

### **1. Interpretation**

1.1 In these terms the following expressions shall have the following meanings:

Business Day	a day other than a Saturday or Sunday or public holiday in England and Wales;
Buyer	Land Securities Properties Limited (registered number 00961477) whose registered office is at 100 Victoria Street, London SW1E 5JL or whichever of its associated companies accepts the Seller's offer and enters into the Contract;
Buyer Group Company	the Buyer, any subsidiary or holding company from time to time of the Buyer, and any subsidiary or holding company from time to time of a holding company of that company. For the purposes of this definition, the terms "subsidiary" and "holding company" are as defined in section 1159 of the Companies Act 2006;
Buyer's Materials	all software, hardware, equipment, cabling, information, specifications and other materials belonging to or provided by or on behalf of the Buyer;
Confidential Information	<p>of a party shall mean all information, in whatever form, made available by or otherwise emanating from that party in connection with the Contract. In the case of the Buyer without limitation its Confidential Information shall include information contained in any Buyer's Materials, information concerning any Works and all information derived from any of them. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"><li>(a) at the time of disclosure is in the public domain;</li><li>(b) after disclosure becomes part of the public domain otherwise than by breach by a party of the provisions of the Contract;</li><li>(c) was already in the possession of the receiving party at the time of disclosure;</li><li>(d) was received by the receiving party after disclosure from a third party who was not required to hold it in confidence; or</li><li>(e) is trivial and/or obvious;</li></ul>

Contract	each agreement between the Buyer and Seller for the supply of Goods and/or Services in accordance with these Terms which is formed in the manner set out in clause 2;
Data Protection Legislation	means the Data Protection Act 2018 ("DPA"), the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR"), or similar legislation as implemented under English law (including any national implementing laws, regulations and secondary legislation), in each case as applicable and in force in the United Kingdom from time to time and all other applicable laws and regulations, relevant industry codes of practice and guidance issued by the Information Commissioner, supervisory authority or other bodies concerning the protection of personal data and privacy, and where "Controller", "data subject", "personal data", "personal data breach", "process", "processor" and "supervisory authority" are referred to in the Contract they shall have the meanings set out in the Data Protection Legislation. References to Article numbers of the GDPR shall be deemed to include the equivalent provisions in the event the Article numbers in the legislation are changed from time to time
Deliverables	all outputs of the performance of Services, including goods, products, documents and materials produced or developed by the Seller or its agents, contractors and employees as part of or in relation to the Contract in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specifications, research, analysis and reports (including drafts);
Delivery	delivery of the Goods as more particularly defined in clause 3.1;
Delivery Address	the delivery address (if any) specified in the Contract, or if none, any other address required by the Buyer;
Good Industry Practice	means the exercise of that degree of reasonable skill, diligence, prudence and foresight which would be expected from a skilled and experienced provider of the Goods and/or Services, seeking in good faith to comply with its contractual obligations;
Goods	the goods and/or materials (including any instalment of them or any part of them) described in the Contract or delivered as part of or ancillary to the Services and the term includes any tangible Deliverables;

Intellectual Property Rights	all intellectual and industrial property rights, including patents, rights in registered and unregistered trade marks (including domain names), rights in registered and unregistered designs, utility models, trade or business names, confidential information, know-how, database rights, topography rights, plant breeder varieties rights, passing-off rights, and copyright (including moral rights), performer protection rights or other industrial, intellectual or commercial rights (including rights in any invention, discovery or process), and applications for registration of any of the foregoing, and the right to apply therefor, in each case in any part of the world;
New Seller	any party other than the Seller which provides the Services instead of the Seller after the expiry or termination of this Contract;
Purchase Order	the Buyer's purchase order for the Goods or Services as referred to in clause 2 below, which is subject to these Terms;
Seller	the person to whom the Order is addressed, unless otherwise stated in the Contract and all references concerning performance by the Seller shall be interpreted as including whether that performance is by its employees, agents or other contractors or represen
Services	the services, including without limitation any Deliverables, labour, materials and technology, to be provided by the Seller as set out in the Contract or provided ancillary to the sale of the Goods;
Specification	any specification of the Goods and/or Services agreed by the Buyer and the Seller including any plans, samples, drawings, data or other information relating to them;
Terms	the Terms and Conditions set out in this Agreement;
Warranty Period	the longer of (i) 12 (twelve) months from the Buyer's acceptance of the Goods and/or Services; (ii) any period specified as such in the Contract or (iii) any period implied by law during which the Goods should remain of satisfactory quality;
Works	has the meaning in clause 19.1.2.

## **2. Formation of the contract**

- 2.1 Each Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or the Services from the Seller.
- 2.2 A Purchase Order may be revoked or amended by the Buyer at any time prior to the Seller's acceptance of the Purchase Order.
- 2.3 Acceptance of a Purchase Order by the Seller shall take place on the earlier of it being expressly accepted or confirmed by the Seller in writing or by any other conduct which is consistent with acceptance.
- 2.4 Upon acceptance of the Purchase Order, a binding Contract shall exist for the supply of Goods and/or Services by the Seller to the Buyer.
- 2.5 The Contract shall comprise the terms of the Purchase Order, these Terms and any additional terms agreed in writing between the Buyer and Seller.
- 2.6 These Terms shall apply equally to Contracts for the supply of Goods and Contracts for the supply of Services except where the application to one or the other is specified.
- 2.7 The Seller shall sell, and the Buyer shall purchase the Goods and/or Services in accordance with the Contract and the terms of the Contract shall apply to the exclusion of any other terms and conditions of the Seller.

## **3. Delivery of goods**

- 3.1 The Goods shall be delivered to the Buyer's requested Delivery Address as stated on the Purchase Order on the date stated in the Contract during the Buyer's usual business hours.
- 3.2 Delivery of Goods shall take place upon completion of unloading at the Delivery Address.
- 3.3 Time of Delivery is of the essence and if there is any delay, the Buyer may, without penalty, cancel the Contract or any part of it.
- 3.4 The Buyer may reject any over or under deliveries and shall not be required to pay for any over deliveries.
- 3.5 A delivery note quoting the number of the Purchase Order and/or the Contract and all other information notified to the Seller as required from time to time must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 3.6 The Buyer shall not be required to accept instalment deliveries or performance unless this is expressly agreed in the Contract. If the Goods are delivered by instalments, the Contract will be treated as a single contract and shall not be severable by the Seller.
- 3.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods.
- 3.8 The Buyer shall not be obliged to return to the Seller any pallets, packaging or packing materials for the Goods, and if requested, all such materials shall be removed by the Seller.

#### **4. Risk and property**

- 4.1 Risk of loss of or damage to the Goods shall pass to the Buyer:
- 4.1.1 at the time of Delivery of the Goods or;
  - 4.1.2 if later, and where appropriate, upon successful completion of any acceptance test referred to in clause 6.3 below.
- 4.2 Property in the Goods shall pass to the Buyer upon Delivery, or, if earlier, when the Goods are paid for or otherwise appropriated to the Contract. The passing of property shall not prejudice any other rights of the Buyer (including rights of rejection). Where title in the Goods passes to the Buyer before Delivery, the Seller shall:
- 4.2.1 store and mark the Goods in such a way that they are readily identifiable as the Buyer's property, and shall not mix them with any other goods; and
  - 4.2.2 not dispose of or deal with the Goods or any documents of title relating to them or any interest in them.
- 4.3 Neither the Seller nor any other person shall have a lien or other rights in or to any Goods, title to which has vested in the Buyer pursuant to clause 4.2 or any Buyer's Materials and the Seller shall ensure the exclusion of any such lien or rights is brought to the notice of any relevant third parties.

#### **5. Buyer's materials**

- 5.1 All the Buyer's Materials shall remain the property of the Buyer and shall only be used by the Seller in relation to the Contract. In no circumstances will Buyer's Materials be duplicated or used other than for the benefit of the Buyer.
- 5.2 No licences or rights are granted to the Seller in respect of the Buyer's Materials and the Seller shall, upon the Buyer's demand, promptly return to the Buyer or destroy the Buyer's Materials without retaining any copies of them.
- 5.3 Unless already so marked by the Buyer, the Seller shall identify and conspicuously mark all the Buyer's Materials as property of the Buyer.
- 5.4 All the Buyer's Materials and shall be returned to the Buyer, at the Buyer's request, in the same condition as originally received by the Seller save for reasonable wear and tear.

#### **6. Rejection and inspection of goods**

- 6.1 The Buyer shall be entitled to reject all or any part of the Goods delivered which are not in accordance with the Contract. Any acceptance of defective, late or incomplete Goods or any payment made shall not constitute a waiver of any rights or claim the Buyer may have, including its right to reject.
- 6.2 Any rejected Goods may be returned to the Seller by the Buyer at the Seller's cost and risk and no payment shall be due from the Buyer. In any event, the Buyer may impose a reasonable charge for handling, storing and returning any of the Goods over delivered, rejected or not included in the Contract.
- 6.3 The Buyer may require acceptance tests to be performed either by the Buyer or the Seller, at the option of the Buyer. If the acceptance tests are executed by the Seller, the specifications and results of the tests shall be made available to the Buyer as soon as possible upon request.

- 6.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.
- 6.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, it may inform the Seller, and if so, the Seller shall take such steps as are necessary to ensure compliance.

### **7. Provision of services**

- 7.1 The Seller shall from the date and for the duration set out in the Contract provide the Services to the Buyer in accordance with the terms of the Contract.
- 7.2 The Seller shall provide the Services at the location specified by the Buyer in the Contract.
- 7.3 The Seller shall meet all performance dates for the Services specified in the Contract or notified to the Seller by the Buyer.
- 7.4 Time of performance of the Services is of the essence and if there is any delay, the Buyer may, without penalty, cancel the Contract or any part of it.

### **8. Warranties**

- 8.1 In addition to the terms and duties implied by law, the Seller warrants to the Buyer that the Goods and all Deliverables shall:
- 8.1.1 be of the quality, quantity and description described in the Contract and in any event will be at least of satisfactory quality as referred to in the Sale of Goods Act 1979;
  - 8.1.2 be of the standards specified from time to time by the Buyer and which may vary depending on the Buyer's business requirements and the type of Goods and/or Services being provided;
  - 8.1.3 be free from defects in design, material and workmanship and will remain free of any such defects for the Warranty Period;
  - 8.1.4 correspond with any relevant Specification;
  - 8.1.5 be suitable for any purpose expressly or by implication made known to the Seller;
  - 8.1.6 comply with all relevant statutory requirements and regulations;
  - 8.1.7 not and will not at any future time, in any way infringe the Intellectual Property Rights or any other rights of any third parties;
  - 8.1.8 be supplied free from all liens and other third party rights and that at the time property in Goods is intended to transfer to the Buyer under clause 4.2 the Seller has the full and unrestricted right to sell and transfer the Goods to the Buyer; and
  - 8.1.9 be marked in accordance with the Buyer's instructions and any applicable requirements of any carrier, and properly packed and secured so as to reach their destination in an undamaged condition.
- 8.2 In addition to the terms and duties implied by law, the Seller warrants to the Buyer that in providing the Services it shall:
- 8.2.1 co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;
  - 8.2.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade;

- 8.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with the Contract;
- 8.2.4 ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Seller by the Buyer;
- 8.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 8.2.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
- 8.2.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 8.2.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises or any other location specified in the Contract where the Services are to be performed;
- 8.2.9 not trespass, cause nuisance or interfere with the rights and activities of any owners, tenants, or occupiers of the Buyer's properties or of property adjoining or neighbouring the Buyer's properties;
- 8.2.10 not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

## **9. Remedies**

- 9.1 If any Goods are not supplied and/or Services are not performed in accordance with the Contract, then without prejudice to any other rights or remedies it may have, the Buyer shall be entitled:
  - 9.1.1 to require the Seller (at the Seller's cost) to repair the Goods and/or correct the Services or (at the Buyer's sole option) to supply replacement Goods and/or re-perform Services within 7 days of request; or
  - 9.1.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods and/or Services or to supply any replacement Goods and/or Services, to terminate the Contract and require the repayment of any part of the price which has been paid.
  
- 9.2 If any Goods are not delivered and/or Services are not completed by the date set out in the Contract, then without prejudice to any other rights or remedies it may have, the Buyer shall be entitled:
  - 9.2.1 to refuse to accept subsequent performance of the Services and/or delivery of the Goods which the Seller attempts to make;
  - 9.2.2 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party;
  - 9.2.3 where the Buyer has paid in advance for Services that have not been provided by the Seller, to have such sums refunded by the Seller;
  - 9.2.4 to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet such dates.



## **10. Price**

- 10.1 The price of the Goods and/or Services shall be as stated in the Purchase Order or as otherwise agreed in writing and shall be the full and exclusive remuneration of the Seller in respect of the supply of the Goods and/or Services.
- 10.2 Prices shall be invoiced in sterling unless agreed otherwise in the Purchase Order.
- 10.3 The price shall be exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice).
- 10.4 The price shall be inclusive of all charges for packaging, packing, import/export clearances, shipping, carriage, insurance, delivery, unloading and unpacking to the Delivery Address and any duties, imposts or levies other than value added tax.
- 10.5 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.
- 10.6 Invoices must contain such information, and be sent to such addressee(s) and address(es) as are notified to the Seller from time to time. The Seller shall provide such supporting information as may be required by the Buyer to verify the invoiced amount.
- 10.7 The Seller shall maintain complete and accurate records of the time spent and materials used by the Seller in providing the Services, and the Seller shall allow the Buyer to inspect such records at all reasonable times on request.

## **11. Terms of payment**

- 11.1 The Seller shall not be entitled to invoice the Buyer until after:
  - 11.1.1 delivery of the Goods or completion of the Services; and
  - 11.1.2 receipt by the Seller of a purchase order number from the Buyer for the Goods and/or Services.
- 11.2 Invoices for Goods and/or Services supplied in accordance with the Contract shall be paid no later than 30 days after receipt by the Buyer of a proper invoice or, if later, 30 days after acceptance of the Goods or Services in question by the Buyer or, as may otherwise be agreed in writing between the Buyer and the Seller from time to time.
- 11.3 The Buyer shall be entitled (but not obliged) to set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller (in either case however arising).
- 11.4 Any sums payable by the Buyer hereunder which remain outstanding after the agreed date for payment shall carry interest (both before and after judgment in respect thereof) on a daily basis at an annual rate equal to two per cent per annum above the base lending rate or equivalent published rate from time to time of Bank of England. The Seller acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended). No interest shall be payable in respect of amounts invoiced that the Buyer disputes in good faith.

## **12. Indemnity**

- 12.1 The Seller shall indemnify and keep the Buyer indemnified against all sums suffered or incurred by the Buyer in respect of all and any demands, liabilities, expenses, claims (including but not limited to any settlements of claims whether before or after the issue of proceedings), judgment sums (including but not limited to sums arising from consent orders or judgments), damages, direct, indirect or consequential losses, costs (including but not limited to legal and other professional costs) suffered or incurred by the Buyer arising out of or in connection with:
- 12.1.1 any breach of the Contract by or any negligence or wrongful act or omission of the Seller, its employees, subcontractors or agents;
  - 12.1.2 any claim that the Goods and/or Services infringe, or their importation, use or resale, infringes, the Intellectual Property Rights of any person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - 12.1.3 any liability including liability under the Consumer Protection Act 1987, liability for death or personal injury or any other liability to any third party which arises from any defect in or failure of the Goods or Services or which otherwise arises from any act or omission of the Seller, its employees, subcontractors or agents;
  - 12.1.4 damage or loss to property (including property of the Seller or its contractor) and all personal belongings whoever owned by except to the extent damage or loss results from the Buyer's negligence;
  - 12.1.5 trespass, nuisance, or interference with the rights and activities of any owners, tenants, or occupiers of the Buyer's properties or of property adjoining or neighbouring the Buyer's properties arising out of any act or omission of the Seller, its employees, subcontractors or agents;
  - 12.1.6 any fraud, forgery, or dishonesty by the Seller, its employees, subcontractors or agents;
  - 12.1.7 any failure of the Seller to comply with the Construction (Design and Management Regulations) 2015 in the performance of its obligations under the Contract; and
  - 12.1.8 any failure of the Seller to comply with provisions under Clause 19.

## **13. Liability**

- 13.1 The Seller shall indemnify and keep the Buyer indemnified against all sums suffered or incurred by the Buyer in 13.1 Neither party excludes or limits its liability for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; © any other liability to the extent it cannot lawfully be excluded or limited.
- 13.2 Each party agrees that the Seller is responsible for its equipment and that the Buyer shall not be liable for any loss or damage to the Seller's equipment howsoever caused unless such loss or damage arises from the Buyer's negligence.
- 13.3 The Buyer's liability to the Seller however arising (including without limitation by reason of negligence) in respect of all claims in total shall be limited to a sum equal to £50,000 with the exception of claims relating to liability set out in:
- 13.3.1 clause 13.1 and
  - 13.3.2 clause 11.2;
- for which the limit in this clause 13.3 shall not apply and the Buyer's liability shall be uncapped.

## **14. Insurance**

- 14.1 The Seller shall procure such insurance cover for such risks and for such amounts as a reasonable insurance broker advising a business supplying the Goods and/or Services to the Buyer would consider prudent including (without limitation):

- 14.1.1 public liability insurance of £25 million per one (1) incident or series of incidents arising out of any one (1) event;
- 14.1.2 employer's liability insurance of £10 million per one (1) incident or series of incidents arising out of any one (1) event;
- 14.1.3 product liability insurance of £10million per claim; and
- 14.1.4 for the Services only unless otherwise agreed professional indemnity insurance of £10million per claim.
- 14.2 Such insurance shall:
  - 14.2.1 be at the Seller's cost and maintained in respect of the Seller's liability under or in connection with any Contract.
  - 14.2.2 expressly include an indemnity to principals clause in favour of the Buyer whereby the Buyer shall be entitled to benefit of the policy.
- 14.3 The Buyer shall be entitled reasonably to increase the minimum levels of insurance cover specified in Clause 14.1 above from time to time for the duration of the agreement and notify the Seller of any such increase, whereupon the Seller shall ensure that the level of cover under each of the insurances listed in clause 14.1 is increased as required.
- 14.4 The Seller shall ensure that all sub-contractors involved in the provision of the Goods and/or the Services take out and maintain appropriate insurance cover of not less than the minimum cover required by the Buyer.
- 14.5 On request from the Buyer, the Seller must produce copies of relevant policies and receipts for premiums.
- 14.6 If the Seller fails to take out insurance in accordance with this clause 0, the Buyer may acquire the necessary insurances on the Seller's behalf and the Seller shall reimburse the Buyer immediately.

## **15. Business continuity arrangements**

- 15.1 The Seller shall implement and maintain appropriate and effective backup, disaster recovery, and business continuity procedures and services in order to meet its obligations under the Contract in accordance with Good Industry Practice (together the "Business Continuity Arrangements").
- 15.2 The Seller shall: (a) ensure that the Business Continuity Arrangements are at all times compliant with ISO 22301 "Societal Security – Business continuity management systems – requirements", ISO 22313 "Societal Security – Business continuity management systems – guidance" and ISO 9001; (b) provide to the Buyer, on request, full written details of its Business Continuity Arrangements; and © permit the Buyer to consult with the Seller as to the Business Continuity Arrangements and to the extent reasonable shall take the Buyer's views and requirements in relation to the Business Continuity Arrangements into account. For the avoidance of doubt, regardless of whether the Buyer's views and requirements are taken into account in relation to the Business Continuity Arrangements, the Seller shall at all times remain fully responsible for the effectiveness of the Business Continuity Arrangements and the Seller's compliance with the Contract.

## **16. Anti-bribery compliance**

- 16.1 In this clause “Adequate Procedures”: means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010 and “Associated Person”: means in relation to a company, a person (including, but not limited to, an employee, agent or subsidiary) who performs services for or on that company’s behalf.
- 16.2 Each party undertakes to the other that:
- 16.2.1 it has not given or agreed to give, and shall not give or agree to give, to any person any bribe, or other form of illegal payment or advantage, with the object of obtaining or inducing the procurement of this disclosure or any other contract, right, interest, privilege or benefit for itself or for any other person, including but not limited to the other parties to the Contract;
  - 16.2.2 it will not, and will procure that any Associated Person will not, in the course of the performance of its duties under this letter, engage in any activity or practice which would constitute an offence under any applicable anti-corruption laws, including but not limited to the Bribery Act 2010;
  - 16.2.3 it has and will maintain in place, Adequate Procedures designed to prevent itself and any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010; and
  - 16.2.4 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause and will provide any information reasonably requested by the other party in support of such compliance.

## **17. Data protection**

- 17.1 In the event the Seller is required to process personal data as part of its obligations under the Contract, the parties agree that, for the purposes of the Data Protection Legislation and unless otherwise agreed, the Buyer shall be the data controller and the Seller shall be the data processor.
- 17.2 The parties, prior to any processing of personal data, shall set out in a Data Processing Annexure the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects (which may be updated from time to time).
- 17.3 In relation to such processing, the Seller shall:
- 17.3.1 only process the personal data on documented instructions from the Buyer as set out in the Contract or in writing from time to time;
  - 17.3.2 immediately inform the Buyer if it considers an instruction infringes the Data Protection Legislation;
  - 17.3.3 not make independent use of the personal data and only process the personal data to the extent, and in such manner, as is necessary for the purposes of the Contract;
  - 17.3.4 not modify, amend or alter the personal data except as instructed by the Buyer;
  - 17.3.5 not transmit or send any personal data unless it is encrypted and the key/password to decrypt it is not communicated as part of the transmission of the data;
  - 17.3.6 not store personal data on any portable medium or device unless the data is encrypted and the encryption key is held or transmitted separately; and
  - 17.3.7 not without the prior written consent of the Buyer disclose or transfer the personal data to any location outside the European Economic Area.

- 17.4 In relation to such processing, the Seller shall at its own cost:
- 17.4.1 implement and maintain appropriate technical and organisational measures for the processing to meet the requirements of the Data Protection Legislation and ensure the protection data subjects' rights, take all measures set out in Article 32 of the GDPR (security of processing) and enable the Buyer to comply with its obligations to respond to requests from data subjects exercising their rights in relation to the personal data;
  - 17.4.2 comply with the Data Protection Legislation; and
  - 17.4.3 comply with the Buyer's data protection policies notified to it from time to time.
- 17.5 The Seller shall at all times at its own cost:
- 17.5.1 ensure the reliability of personnel engaged in the provision of the processing including providing training and ensure their compliance with the Data Protection Legislation;
  - 17.5.2 ensure that only personnel needing access to the personal data are granted access to such data and that all personnel who process the personal data have committed to or are otherwise under confidentiality obligations;
  - 17.5.3 prohibit password sharing by personnel and ensure personnel do not disclose their passwords (or similar), keep passwords confidential and ensure any loss or unauthorised access to passwords is reported as soon as reasonably practicable;
  - 17.5.4 notwithstanding any other provision of this Contract, not engage another processor or allow access to the personal data to any third party without prior specific written authorisation of the Buyer;
  - 17.5.5 inform the Buyer in advance of any proposed changes to processors and allow the Buyer an opportunity to discuss and object; and
  - 17.5.6 procure that the processor is subject to terms no less onerous than the terms of this contract in relation to processing Personal Data.
- 17.6 The Seller shall at its own cost:
- 17.6.1 notify the Buyer promptly if it receives a request from a data subject for access to their personal data;
  - 17.6.2 promptly provide such assistance, co-operation and information as the Buyer reasonably requires to enable the Buyer to comply with the Data Protection Legislation including:
    - (a) security of processing;
    - (b) data protection impact assessments;
    - (c) consultation with the supervisory authority; and
    - (d) any actions to be taken in respect of personal data breaches.
- 17.7 Without prejudice to any other provision of this Contract, if the Seller becomes aware any unauthorised or unlawful processing of or accidental loss, theft or destruction of, or damage to any personal data which was, at the relevant time, in the possession or control of the Seller or a sub-contractor of the Seller (each, a "Data Incident") or where there are reasonable grounds for suspecting that a Data Incident has occurred the Seller shall:
- 17.7.1 notify the Buyer without undue delay of becoming aware;
  - 17.7.2 without undue delay of becoming aware provide the Buyer with all information, assistance and cooperation required by the Buyer to enable the Buyer to comply with the Data Protection Legislation;
  - 17.7.3 promptly undertake such actions as are required by the Buyer in order to remedy any defect or potential breach of the Seller's obligations.

- 17.8 The Seller shall cooperate (and procure that each sub-contractor cooperates) fully with the Buyer's reasonable instructions regarding how to minimise the effects of the Data Incident or suspected Data Incident (as the case may be).
- 17.9 The Seller shall at its own cost:
- 17.9.1 at the Buyer's option securely delete or return all the personal data to the Buyer promptly after the end of the provision of personal data processing services or termination of the Contract and securely delete existing additional copies;
- 17.9.2 make available to the Buyer all information, assistance and cooperation required by the Buyer to demonstrate compliance with this Contract and the Data Protection Legislation and permit and contribute to audits, including inspections, conducted by the Buyer or an auditor appointed by the Buyer; and
- 17.9.3 maintain a written record of all categories of processing activities carried out on behalf of the Buyer, containing (where applicable) the information required by the Data Protection Legislation, and make the record available to the Buyer upon request.
- 17.10 The terms of, and obligations imposed by, this clause 17 shall survive termination of the Contract.

## **18. Termination**

- 18.1 Without affecting any other rights and remedies it may have, the Buyer shall be entitled to terminate the Contract in whole or in part and/or suspend its performance in whole or in part immediately without liability to the Seller by giving written notice to the Seller at any time if the Seller:
- 18.1.1 is in breach of any provision of, or purports to cancel, the Contract;
- 18.1.2 has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Seller is incorporated, resident or carries on business;
- 18.1.3 is subject to a change of control in its ownership or management that the Buyer considers is detrimental to its relationship with the Seller or the Contract. and in any other circumstances provided for in these Terms and/or the Contract.
- 18.2 In addition, without affecting any other rights and remedies it may have, the Buyer may terminate the Contract in whole or in part at any time, on written notice, but with immediate effect. In these circumstances the Buyer agrees to pay the Seller any reasonable and unavoidable third party costs that have been incurred by the Seller together with fair and reasonable compensation for any work in progress completed at the date of termination but such compensation shall not include loss of anticipated profits or consequential loss of any kind.
- 18.3 Any termination howsoever caused shall not affect:
- 18.3.1 any right or liabilities which have accrued prior to the time of termination;
- 18.3.2 the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force after termination including but not limited to clauses 8 (Warranties), 9 (Remedies) and 20 (Confidentiality).

- 18.3.3 Upon termination however caused the Seller shall immediately return:
- (a) all Specifications supplied by the Buyer or created by the Seller for the Buyer pursuant to clause 19;
  - (b) the Buyer Materials;
  - (c) the Deliverables whether or not then complete;
  - (d) any other information or materials in its possession or under its control which belong to or were supplied by the Buyer, including any Confidential Information of the Buyer.

If the Seller fails to do so then the Buyer or its authorised representatives may without limiting its other rights or remedies enter the Seller's premises and take possession of them. Until they have been returned or delivered, the Seller shall be solely responsible for their safe keeping and will not use them for any purpose.

## **19. Intellectual property rights**

- 19.1 In relation to Goods or Deliverables which are developed to a Specification, the following shall apply:
- 19.1.1 All Specifications provided by the Buyer and all Intellectual Property Rights in or arising out of them shall vest in and remain at all times the property of the Buyer. Such Specifications may only be used by the Seller as necessary to perform the Contract.
  - 19.1.2 Where any Specification, Goods, any developments to Goods or Deliverables (each being "Works") are produced or developed by the Seller specifically for the Buyer, all Intellectual Property Rights in such Works shall be the exclusive property of the Buyer.
  - 19.1.3 The Seller hereby assigns (or shall procure the assignment) to the Buyer absolutely, with full title guarantee, and free from all third party rights, all right, title and interest in any Intellectual Property Rights conferred by the law in force presently or at any future time in all and any part of the world in or arising out of any Works (whether such work is or was created before, on or after the date of the Purchase Order) for the full term of such rights and all renewals and extensions, together with all rights of action and remedies (including, without limitation, damages for detention or unlawful interference with any infringing copy) in relation to infringements thereto and hereby waives or shall procure a waiver of all moral rights in such Works.
  - 19.1.4 At the request of and at no additional cost to the Buyer, the Seller shall promptly do all such further things and sign all documents or instruments necessary in the opinion of the Buyer to vest all Intellectual Property Rights in or arising out of any Works in the Buyer, absolutely and to enable the Buyer to defend and enforces its Intellectual Property Rights.

## **20. Confidentiality**

- 20.1 Neither party shall without the prior written consent of the other party, during and after termination of the Contract, use (other than in the performance of the Contract) or disclose to any other person any Confidential Information of the other party, except that any obligations contained in this clause shall not prevent any disclosure of Confidential Information which is required by law, court order or any legal or regulatory authority, which is required to comply with the rules of any relevant stock exchange or disclosure to a party's professional advisors acting in their capacity as such.
- 20.2 The Seller shall not publicise or disclose the existence or content of any Purchase Order or Contract, nor its relationship with the Buyer, without the prior written agreement of the Buyer.

## **21. Employees**

- 21.1 The Seller agrees that all personnel used by it in the performance of its obligations under the Contract are the responsibility of and under the direction and control of the Seller (or its contractors) and shall remain its or its contractors' employees. The Seller agrees that it shall be and remain responsible for the remuneration of its personnel and any and all costs including tax liabilities incurred in connection therewith. The Seller shall indemnify and keep indemnified the Buyer at all times from and against all claims, demands, costs, expenses and liabilities incurred by the Buyer arising out of or in connection with such personnel including, without limitation, any claims arising from any allegation or finding that such personnel are or have become employed by the Buyer and any claims arising from the termination of the employment of such personnel except where the Buyer agrees in writing to employing any such personnel.
- 21.2 Without prejudice to the generality of clause 21.1, the Buyer and the Seller agree that if a contract of employment of any person engaged by the Seller (or its contractors) has effect pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time ("the Regulations"), as if originally made between the Buyer and such person or the New Seller and such person, or if a claim is made to such effect the Seller shall indemnify and keep the Buyer and/or New Seller indemnified at all times from and against all claims and costs (including legal costs on a full indemnity basis) expenses, losses and liabilities incurred by the Buyer and/or New Seller in respect of the employment, and the termination of the employment, of any such employees and in respect of any claim arising out of the actual or alleged application of the Regulations.

## **22. Contracts (Rights of Third Parties) Act 1999**

- 22.1 In addition to the Buyer, each Contract is entered into for the benefit of any Buyer Group Company and any other owner of the properties to which the Services relate, who are each entitled, in their own right, as third parties, to enforce all provisions benefiting the Buyer. In addition, any New Seller shall be entitled to enforce clause 21.2. The Buyer and the Seller shall not be required to notify or obtain the consent of any third party in order to rescind or vary any of the terms and conditions of a Contract. Except as expressly provided for in this clause and clause 21.1, the parties agree that any person who is not a party to the Contract shall have no right to enforce any term of a Contract against either of the parties to it under the Contracts (Rights of Third Parties) Act 1999.

## **23. General**

- 23.1 No variation of these Terms or any Contract shall be effective unless it is made in writing and signed by duly authorised representatives of both parties. For the purposes of this clause, the expression "variation" includes any supplement, deletion or replacement however effected.
- 23.2 If any Contract contains provisions which are inconsistent with, or conflict with these terms, those provisions will prevail over these terms to that extent except (i) nothing shall prevail over clauses 8 (Warranties) 9 (Remedies) 12 (Indemnity) 13 (Liability) and 22 (Rights of Third Parties) unless the provision expressly refers to those clauses and states that it prevails over them to the extent that it contradicts them; (ii) no standard terms of the Seller shall form part of any Contract unless the intention to incorporate such Seller's terms and to override these terms wholly or in part is clearly expressed in Writing and signed by duly authorised representatives of both parties.



- 23.3 The Buyer may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, or sub-contract any or all of its obligations hereunder.
- 23.4 The Seller shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations hereunder, nor purport to do so, nor sub-contract any or all of its obligations hereunder.
- 23.5 The Seller warrants that at all times it acts as principal and not as the agent of any third party.
- 23.6 Any notice shall be in writing and signed by or on behalf of the party giving it and shall be given by delivering it by hand, by leaving it at or by sending it by pre paid first class post or recorded delivery to the recipient's address, or by sending it by facsimile transmission. The address or fax number of a recipient is as set out in the Contract or as the recipient may designate by notice given pursuant to this clause. A notice is deemed to be received, if delivered by hand, when left at or delivered to the recipient's address or in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or in the case of fax, at the time of transmission. If deemed receipt under any methods of delivery is not within business hours (between 9.00 am and 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to be received when business next starts in the place of receipt. Notices may not be sent by email.
- 23.7 Any failure to exercise or delay by a party in exercising a right or remedy arising in connection herewith or by law shall not constitute a waiver of such right or remedy or of any other rights or remedies.
- 23.8 If the whole or any part of any clause (s) are invalid or unenforceable the parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision. Any such invalidity or enforceability shall not affect the validity or enforceability of any other provision.
- 23.9 Save as expressly provided herein, the rights and remedies provided by these Terms are cumulative and (subject as otherwise provided in these Terms) are not exclusive of any right or remedy provided by law. No exercise by a party of any one right or remedy shall (save unless expressly provided otherwise) operate so as to hinder or prevent the exercise by it of any other right or remedy.
- 23.10 These Terms, together with those set out in the Contract constitute the entire agreement and understanding of the parties and supersede any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in these Terms and the Contract and, except in the case of fraud or fraudulent misrepresentation neither party shall be entitled to rely on any agreement, understanding, arrangement or representation which is not expressly set out herein or in the Contract.
- 23.11 Nothing in the Contract shall constitute a partnership, joint venture, representative or agency relationship between the parties hereto or be construed or have effect as constituting any relationship of employer and employee between the parties. Neither party shall have the authority to bind or pledge the credit of, or oblige, the other in any way without obtaining the other's prior written consent.

**24. Dispute resolution**

- 24.1 If any dispute or difference arises between the Buyer and the Seller in connection with or arising out of the Contract, representatives of each party shall, within three (3) days of a written request from the other party, meet in good faith to try to resolve the dispute.
- 24.2 If the dispute or difference is not resolved by the representatives, then a member of the senior management of each party shall, within five (5) days of the conclusion of the meeting described in clause
- 24.3 If any dispute is not resolved through negotiation in accordance with clauses 24.1 and 24.2, the parties shall use their reasonable endeavours to resolve the dispute through an alternative dispute resolution procedure (“ADRP”).
- 24.4 If the dispute shall not have been resolved by the ADRP within 90 days of the initiation of such procedure (or such other period as the parties may agree), or if either party will not, or ceases to, participate in the ADRP or fails to agree to settle in accordance with the ADRP, either party shall have the right to commence court proceedings. 24.5 Nothing in this clause 24 will prevent either party from seeking a preliminary injunction or other judicial relief at any time if, in its judgement, such action is necessary to prevent irreparable damage.

**25. Governing law and jurisdiction**

These Terms, the Contract, any agreement and dispute or claim (including any noncontractual dispute or claim) that arises out of or in connection with these Terms and the Contract shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of clause 24 the parties hereto irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales for the determination of all disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with these Terms and the Contract.

**Schedule**

Data processing annexure

Subject-matter of the processing	[e.g. The performance of the [Services]]
Duration of the processing	[e.g. The term of the Contract and for such further time as the parties shall agree in writing.]
Nature and purpose of the processing	[insert reasons why the Agency is processing personal data and the type of processing to be undertaken.]

Type(s) of personal data	[insert as appropriate – e.g. name, address, email address, phone number, date of birth, bank details etc. (and set out any sensitive personal data)]
Categories of data subjects	[insert as appropriate – e.g. customers, employees, applicants, former employees etc]
[Location of processing]	[insert country where Supplier will hold the data] [Note: only required if data is held outside the UK & EEA]
Insert data processing instructions	