

STANDARD TERMS AND CONDITIONS OF PURCHASE FOR GOODS AND/OR SERVICES

1. INTERPRETATION

1.1 In these Conditions:

“Applicable DP Law”	means: (a) UK DP Law, if the term is (i) defined in UK DP Law and (ii) applies to the Processing in question; or (b) if (a) does not apply, the GDPR.
"Brexit Event"	an event involving England leaving the European Union (whether with Scotland, Wales and/or North Ireland or not), including, where applicable, any transition period or implementation period.
“Controller”	has the meaning given to it in Applicable DP Law.
"Conditions"	means the standard terms and conditions of purchase set out in this document and any special terms and conditions agreed in Writing between NWL and the Supplier;
“Confidential Information”	means any information that relates to the affairs of NWL or the Supply (including, without limitation, the Specification) and that is acquired by the Supplier in anticipation of or as a result of the Contract. This excludes information which is in the public domain other than through the breach of any duty of confidentiality;
"Contract"	means the contract comprising the Purchase Order, any Specification and the Conditions;
“Data Protection Legislation”	means (i) the General Data Protection Regulation (EU) 2016/679 (“GDPR”), unless and until GDPR is no longer directly applicable in the UK, together with any national implementing laws (including but not limited to the UK Data Protection Act 2018), regulations and secondary or subordinate legislation, as amended or updated from time to time, in the UK (ii) any successor legislation to the GDPR or the Data Protection Act 2018 (iii) any guidance and codes of conduct/practice issued by the supervisory authorities, including the Information Commissioner and (iv) any other applicable data protection or privacy legislation or regulations;
“Data Protection Requirements”	as applicable, European DP Law and any other applicable laws and regulations relating to the processing of personal data or personally identifiable information anywhere in the world.
“Data Subject”	has the meaning given to it in Applicable DP Law.
“e-Privacy Regulation”	the European Regulation of the European Parliament and of the Council which supersedes Directive 2002/58/EC, and until that Regulation does supersede that Directive, means The Privacy and Electronic Communications (EC Directive) Regulations 2003 (2003 No. 2426).

"European DP Law"	as applicable, (a) the GDPR and any data protection legislation applicable from time to time accompanying the GDPR (including UK DP Law) together with (b) the ePrivacy Regulation and any privacy legislation applicable from time to time accompanying the ePrivacy Regulation; in relation to England this definition applies whether or not there is a Brexit Event, and includes any data protection legislation superseding the GDPR and/or superseding the ePrivacy Regulation together with applicable Guidance
"European Law"	European Union or European Member State law (as referred to in the GDPR) and such other law as may be designated in its place if there is a Brexit Event.
"Goods"	means any materials or goods supplied by the Supplier in connection with any Services and/or described in a Purchase Order;
"Guidance"	in relation to the GDPR means, as applicable, guidelines, recommendations, and best practices produced by the European Data Protection Board and published under Article 70(3) GDPR, or codes of practice or guidance produced by the Information Commissioner or other competent authority; and in relation to the ePrivacy Regulation means, as applicable, guidelines, recommendations, and best practices issued by the European Data Protection Board under the ePrivacy Regulation, or codes of practice or guidance produced by the Information Commissioner or other competent authority.
"High Risk"	<p>a high risk, in terms of both likelihood of occurrence and severity of impact, to the rights and freedoms of Data Subjects, by reference to (i) the type of breach, (ii) the nature, sensitivity and volume of Personal Data, (iii) the number of affected Data Subjects, (iv) the ease of identification of Data Subjects, (v) the severity of consequences for Data Subjects (including the permanence of those consequences), (vi) the special characteristics of the Data Subjects, (vii) the special characteristics of NWL as the Controller and which rights and freedoms shall include:</p> <p>(a) the right to privacy (e.g. loss of control over their personal data, limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, and loss of confidentiality of personal data protected by professional secrecy); and/or</p> <p>(b) where applicable other fundamental rights such as freedom of speech, freedom of thought, freedom of movement, prohibition of discrimination, right to liberty, conscience and religion, or any other significant economic or social disadvantage to data subjects,</p> <p>as set out in the Article 29 Working Party's statement of 30 May 2014 in WP218 and recitals 75 and 86 of GDPR or as otherwise determined by European Law from time to time.</p>
"Liquidated Damages"	means such sums (if any) described as such in the Contract;
"NWL"	means Northumbrian Water Limited, a company registered in England and Wales under company number 2366703;
"Personal Data"	has the meaning given to it in Applicable DP Law.

"Personal Data Breach"	has the meaning given to it in Applicable DP Law.
"Processing"	has the meaning given to it in Applicable DP Law.
"Processor"	has the meaning given to it in Applicable DP Law.
"Premises"	means the address(es) where the Services are to be performed and/or the Goods are to be delivered as stated on the Purchase Order (if so stated) and/or such other address(es) as NWL may notify to the Supplier from time to time;
"Price"	means the price payable for the Supply;
"Prohibited Act"	means any offence under the Bribery Act 2010;
"Purchase Order"	means NWL's purchase order and any other document specified or referred to therein setting out NWL's requirements for the Supply;
"Relevant Data"	all personal data of which NWL is the controller and which are processed by the Supplier for the purpose of providing the Supply.
"Restricted Country"	any third country or international organisation as described in the GDPR (but excluding any of England, Scotland, Wales and Northern Ireland, if there is a Brexit Event).
"Securely"	by secure means, so as to prevent a personal data breach; in relation to returning personal data this shall be by the secure means agreed between NWL and the Supplier; in relation to deletion of personal data, the secure means used by the Supplier shall be in accordance with the latest guidance from the Information Commissioner.
"Security Requirements"	those security requirements applicable to the Supplier's processing, being those set out in the Contract, in NWL's information security policy from time to time, or otherwise referred to in Annex A, Section 2 (Details of Data Processing).
"Services"	means any services described in a Purchase Order;
"SLA"	means the service levels (if any) set out in the Contract;
"Specification"	includes any plans, drawings, data or other information relating to the Goods and/or Services which is either set out or referred to in the Contract, or subsequently agreed in Writing by NWL;
"Standard Contractual Clauses" or "SCC"	the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to controllers established in third countries (controller-to-controller transfers), as set out in the Annex to Commission Decision 2004/915/EC, a completed copy of which is set out in Annex A of these Conditions.
"Supplier"	means the person, firm or company to which a Purchase Order is issued;
"Supply"	means the supply of the Goods and/or Services by the Supplier under the Contract;

"Term"	the duration of the processing of Relevant Data pursuant to the Contract including during any transitional arrangements on entrance or exit.
"UK DP Law"	the UK Data Protection Act 2018 and regulations/other subordinate legislation (a) made under that Act or (b) made under section 2(2) of the European Communities Act 1972 which relate to the GDPR.
"UK-GDPR"	the UK version of the GDPR which applies to the Processing of Relevant Data if there is a Brexit Event.
"Working Day"	means any day other than a Saturday or Sunday on which banks are generally open for business in England;
"Writing"	means any form of written or typed communication sent by courier, post, email, facsimile transmission or any comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time, and any reference to the plural indicates the singular or vice versa.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF PURCHASE

2.1 The Purchase Order constitutes an offer by NWL to purchase the Supply subject to and in accordance with these Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to NWL or subject to which the Purchase Order is accepted or purported to be accepted by the Supplier or any terms and conditions which the Supplier otherwise seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. Any reference in the Purchase Order or the Conditions to the Supplier's quotation, specification or like document shall not be deemed to imply that any terms or conditions endorsed upon, delivered with, or referred to in such quotation, specification or like document are to have effect to the exclusion or amendment of these Conditions.

2.3 The Purchase Order will lapse unless accepted unconditionally by the Supplier in Writing within ten (10) Working Days of its date. If the Contract is performed within this ten day period, no acceptance in Writing is necessary.

2.4 No variation to the Contract shall be binding unless agreed in Writing between the authorised representatives of NWL and the Supplier.

2.5 Notwithstanding the foregoing, NWL may at any time make changes in Writing relating to the Supply, including (without limitation) changes in the Specification, quality or quantities, and/or time or place of delivery. If such changes result in any alteration in cost of, or time required for, the performance of the Contract, a fair and reasonable adjustment shall be made to the Price, date or period for delivery, or both. Any such adjustment must be agreed in Writing before the Supplier proceeds with such change. If no such agreement is reached within ten (10) Working Days the matter shall be referred for resolution in accordance with Condition 26 and the Supplier will (unless otherwise agreed in Writing) suspend or not commence the Supply. NWL can withdraw the change at any time, and, in the event that the Supplier unavoidably incurs additional costs in connection with any suspension that will not be recovered as part of the Price, NWL shall reimburse the same if invoiced therefor, provided that the Supplier also produces evidence of its entitlement to the reasonable satisfaction of NWL. For the avoidance of doubt, NWL shall not be entitled to use this right to cancel Services which have already been performed.

- 2.6 The Contract will be treated as a single contract and not severable even if the Services are to be performed or Goods are to be supplied by instalments.

3. STANDARD OF SUPPLY AND PREVENTION OF CORRUPTION

- 3.1 The Goods shall, subject as provided in these Conditions, be as specified in the Contract and the Supplier shall perform the Services at all times in accordance with the Contract (including, without limitation, any SLA) and, if no higher standard is specified therein, to the standard referred to within Condition 3.4.3 below.
- 3.2 The Supplier shall comply with all applicable statutes, regulations, byelaws and other legal requirements, and any codes of practice or guidelines from time to time in force concerning the Supply.
- 3.3 NWL relies on the skill and judgment of the Supplier in the execution of the Contract and the provision of the Supply and the Supplier is deemed to have understood the nature, extent and purpose of the Supply and satisfied itself in relation to all matters connected with the Supply and the Premises (where applicable), and NWL shall at the request of the Supplier, grant such access to the Premises as may be reasonable for this purpose. The Supplier is also deemed to have acquainted itself with the purposes for which the Goods and/or Services are to be used.
- 3.4 The Supplier represents and warrants to NWL that:
- 3.4.1 the Supplier has good title to the Goods which are its sole unencumbered property and which the Supplier is entitled to and shall sell free of any charge, lien, mortgage or other security whatsoever;
- 3.4.2 any Goods will comply with their description and any applicable specification (if any), all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and will be free from defects in design, materials and workmanship, and will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be suitable for their intended purpose and, in this respect, NWL relies on the Supplier's skill and judgement;
- 3.4.3 any Services will be performed with the best care, skill and diligence (in accordance with best practice in the Supplier's industry, profession or trade) by appropriately qualified, skilled and trained personnel who are suitably experienced to perform tasks assigned to them;
- 3.4.4 neither it nor any of its employees, agents or subcontractors has committed (and nor will they commit) any Prohibited Act whether in connection with the award of the Contract or otherwise; and
- 3.4.5 it has adequate procedures in place to prevent the occurrence of a Prohibited Act.

4. MANNER OF PROVISION OF THE SUPPLY

- 4.1 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable it to provide the Supply concurrently with the execution of work by others. The Supplier shall co-operate with such others as NWL may reasonably require.
- 4.2 Whenever present on the Premises or any other premises of NWL, the Supplier shall, and shall procure that its employees, agents or subcontractors shall comply in all respects with all security and other terms, policies and/or guidelines applicable to such premises as are made known to the Supplier and any instructions from time to time issued by NWL regarding the conduct of the Supplier or its employees, agents and subcontractors on any such premises. In addition, the Supplier shall take such steps as are reasonably required by NWL to prevent unauthorised persons being admitted to any such premises. If NWL gives the Supplier notice that any person is not to be admitted to or is to be removed from any such premises, or is not to become involved in, or is to be removed from,

involvement in the performance of the Contract, the Supplier shall take all necessary steps at its own cost to comply with such notice and, if required by NWL, the Supplier shall replace any person removed under this Condition with another suitably qualified and experienced person and procure that any pass issued to the person removed is surrendered to NWL.

- 4.3 If and when reasonably requested by NWL, the Supplier shall give to NWL a list of names of all persons who are or may be at any time concerned with the Supply or any part of them, specifying the capacities in which they are concerned, and giving all other particulars and evidence of identity and other supporting evidence as NWL may reasonably require.
- 4.4 The decision of NWL as to whether any person is to be admitted to or is to be removed from the Premises or any other premises of NWL, or is not to become involved in, or is to be removed from involvement in the performance of the Contract shall be final and conclusive.
- 4.5 Where the Supplier or its employees, agents or subcontractors, in providing the Supply, executes work using, and/or installs software on, and/or connects computer equipment to the computer network or equipment used by NWL (collectively the NWL Network) then the Supplier shall (and shall ensure that its employees, agents or subcontractors shall) observe such procedures (including without limitation and where required by NWL, the use of equipment and software provided by NWL to provide the Supply in place of the Supplier's own equipment and software and/or making available any equipment or software for virus checking by NWL prior to installation and/or connection to the NWL Network) and provide such information as NWL shall require. The Supplier further undertakes that no such equipment or software (other than any provided by NWL to the extent it is used properly) used by the Supplier or its employees, agents or subcontractors shall cause any loss, damage, corruption or other adverse effect upon the NWL Network. The Supplier shall indemnify NWL against any loss or corruption of data and any non-availability, diminution in performance or other loss or damage caused to the NWL Network as a result of non-compliance with this Condition 4.5.
- 4.6 The Supplier will provide such progress reports and other information in relation to the provision of the Supply as NWL may reasonably request from time to time.
- 4.7 On completion of the Supply, the Supplier shall remove its plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Supply and leave the Premises in a neat, tidy and safe condition and, in any event, in no worse condition than when the Supplier first gained access to the Premises.
- 4.8 Prior to the commencement of performance of the Supply, the Supplier shall provide NWL with any instructions or other information which NWL requires to accept such performance. All Goods shall be supplied with full instructions for their proper use, maintenance and repair, and with any necessary warning notices clearly displayed.
- 4.9 The Supplier shall not unreasonably refuse any proper request by NWL to inspect, test or analyse any Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide NWL with all facilities reasonably required for the same. If NWL informs the Supplier in Writing within seven (7) days of inspection, testing or analysis that it is not satisfied that the Goods will comply in all respects with the Contract, the Supplier shall, without prejudice to any other right or remedy of NWL, take such steps as are necessary to ensure compliance, and the costs of such tests, inspection or analysis shall be met by the Supplier. NWL may set off any such costs against the Price in accordance with Condition 6.4.
- 4.10 For the avoidance of doubt, unless stated otherwise in the Contract, NWL shall not be obliged to carry out any inspection, testing or analysis of any Goods or Services, nor shall any acceptance by NWL of any Goods or Services relieve the Supplier of any of its obligations under the Contract.
- 4.11 Where any Goods are to be supplied in instalments, each delivery shall be accompanied by a packing note or delivery note setting out the number of the Purchase Order.

4.12 NWL shall not be obliged to return to the Supplier any packaging or packing materials for any Goods, whether or not it accepts the relevant Goods themselves.

5. PRICE

5.1 The Price payable for the Supply shall be as stated in the Purchase Order, save only as may be varied under Condition 2.5, and, unless otherwise stated, shall:

5.1.1 exclude any applicable value added tax ("VAT") (which shall be payable by NWL subject to receipt of a VAT invoice); and

5.1.2 include all charges for packaging, carriage, insurance and delivery of any Goods, all charges for travel, consumables and other expenses incurred in performing any Services, and any duties, imposts or levies other than VAT.

6. PAYMENT

6.1 The Supplier may invoice NWL on or after completion of the Supply, unless otherwise stated in the Purchase Order.

6.2 Each invoice shall be submitted electronically in PDF format only to: apinvoices@nwl.co.uk

Each invoice must include the Purchase Order number and shall be submitted as an individual PDF document regardless of the number of pages.

6.3 Unless otherwise stated in the Purchase Order, NWL shall pay the Price for the Supply within forty five (45) days after receipt by NWL of the Supplier's valid and correct invoice.

6.4 NWL may, at its sole discretion, either set off against the Price (including any applicable VAT payable) any sums owed to NWL by the Supplier, including (without limitation) any Liquidated Damages payable in respect of delay in performance, breach of any SLA or otherwise, up to any cap or caps on the same, in each case as set out in the Contract, or invoice the Supplier for the same monthly in arrears.

6.5 The Supplier must submit electronically each invoice promptly to NWL only to the e-mail address given in Condition 6.2 on or after completion of the Supply, or at such other intervals only if set out in the Contract.

6.6 No payment made or acceptance in respect of any Goods supplied or Services performed by the Supplier will in any way restrict any claims or rights NWL may otherwise have against the Supplier.

7. TIME FOR PERFORMANCE

7.1 The Supply shall be performed on the date or within the period stated in the Contract, and, when the Supply is to be performed at the Premises, during NWL's usual business hours unless otherwise agreed in Writing. Time is of the essence of the Contract.

7.2 If NWL is unable to specify either or both of the date of commencement or completion of performance of the Supply until after placing the Purchase Order, NWL shall give the Supplier reasonable notice of such date(s) in accordance with Condition 2.5.

7.3 The Supplier shall begin performing the Supply on the date stated in the Contract and shall complete the provision of the Supply by the date, or within the period, stated in the Contract (whichever is applicable). If requested by NWL, the Supplier shall submit such detailed programmes of work and progress reports as NWL may from time to time reasonably require. In the event that NWL believes, in its absolute discretion, that the Supplier is unlikely either to achieve any programme milestones which NWL considers to be key milestones by the date agreed for them, or to complete the Supply by the date (or within the period) for completion set out in the Contract (or otherwise agreed in Writing), then

NWL shall be entitled to notify the Supplier in Writing that any dates or periods for delivery are of the essence of the Contract. Following such notification, if the Supply is not completed, or key milestones achieved, by such date(s), or within such periods, NWL shall, without prejudice to any other right or remedy, be entitled (at its option) to regard the Contract as discharged by the Supplier's breach, to release itself from any obligation to accept and pay for any Goods or Services, to cancel all or part of the Contract yet to be performed, and to require the repayment of any part of the Price which has been paid.

8. RISK AND PROPERTY

- 8.1 Risk of damage to or loss of any Goods shall pass to NWL upon completion of delivery to NWL in accordance with the Contract. Transit and offloading shall in every case be at the Supplier's risk.
- 8.2 Title to any Goods shall pass to NWL at the time and place of delivery unless otherwise specifically agreed in Writing, save where any advance payment or progress payment is made by NWL, in which case the title (but not the risk) in any Goods purchased or allocated by the Supplier for the purposes of the Contract shall immediately vest in NWL at the time of such purchase or allocation.

9. NWL'S MATERIALS

- 9.1 Where NWL issues any goods, equipment, consumables or materials free of charge to the Supplier for the purpose of the Contract ("NWL's Materials") such items shall remain the property of NWL and be held at the Supplier's risk. The Supplier shall maintain all of NWL's Materials in good order and condition and shall use them solely in connection with the Contract.
- 9.2 Where any of NWL's Materials are removed from the Premises the Supplier shall ensure that they are kept separate and apart from all property of other parties and are clearly marked or identified as the property of NWL.
- 9.3 The Supplier shall indemnify NWL against loss of or damage to any of NWL's Materials during the time they are in the Supplier's possession, custody or control. During such time the Supplier shall adequately insure the same in the name of and for the benefit of NWL at the Supplier's expense with a reputable insurance company against loss or damage arising from any cause whatsoever and shall produce to NWL on demand the policies of such insurance and the receipts for premiums paid thereon.
- 9.4 The Supplier shall notify NWL of any surplus items remaining after completion of the Services and shall return or dispose of them as NWL may direct.
- 9.5 The Supplier shall indemnify NWL against any waste of NWL's Materials arising from bad workmanship or negligence of the Supplier or any of its employees, agents or subcontractors.
- 9.6 The Supplier hereby waives any lien that it might otherwise have (whether at the date of the Contract or subsequently) over any of NWL's Materials, whether for work done thereon or otherwise.

10. DATA PROTECTION

Please refer to Annex A of these Conditions.

11. FREEDOM OF INFORMATION

11.1 Where the Freedom of Information Act 2000 ("FoIA") applies to the Supplier and the Supplier receives a request to disclose information to a third party under FoIA which relates to NWL and/or the Contract, the Supplier shall:

- 11.1.1 inform NWL about the request for information and the nature of the information being sought as soon as reasonably practicable;

11.1.2 consider and apply all lawful exemptions available to it under FoIA to withhold information sought in terms of the request for information;

11.1.3 consult with NWL prior to the disclosure of any such information; and

11.1.4 keep NWL informed about the Supplier's progress in dealing with any request for information and, where requested by NWL, provide NWL with copies of any correspondence and documents relating to the request for information.

11.2 The provisions of this Condition 11 shall survive the expiry or termination of the Contract.

12. ENVIRONMENTAL INFORMATION

12.1 Without prejudice to the Supplier's obligations pursuant to Condition 11 above, the Supplier shall both during and following the expiry or termination of the Contract use all reasonable endeavours to assist NWL to comply with its obligations under the Environmental Information Regulations 2004 (and any subsequent enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof). Such assistance shall be provided by the Supplier at no additional cost to NWL.

12.2 The provisions of this Condition 12 shall survive the expiry or termination of the Contract.

13. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

13.1 Where NWL commissions the Supplier under the Contract to create any work (including any designs or artwork) or any invention or improvement, ownership of such works, inventions and improvements including any intellectual property rights therein is hereby assigned to NWL and shall vest in NWL upon their creation and be the sole and absolute property of NWL.

13.2 The Supplier hereby assigns to NWL all inventions, improvements and discoveries (whether patentable or not) conceived in the performance of the Contract made by any person employed by or working under the direction of the Supplier. On completion of the Contract, the Supplier shall give to NWL all designs, negatives, engineering drawings and data and information of whatsoever nature in its possession and cause its employees to sign any documents necessary to enable NWL to file applications for patents throughout the world and to obtain title thereto and the Supplier shall use its best endeavours to facilitate the same.

13.3 The Supplier irrevocably appoints such person as may be nominated by NWL to be the attorney of the Supplier to act for and on its behalf in completing any assignments and other documents to put into effect the Supplier's agreement in Conditions 13.1 and 13.2.

13.4 It shall be a condition of the Contract that, except to the extent that the Supply incorporates designs furnished by NWL, the Supply will not infringe any patent, trademark, registered design, copyright or other right in the nature of industrial property of any third party.

13.5 The Supplier undertakes and agrees:

13.5.1 to use the Confidential Information only for performing its obligations and in accordance with its rights under the Contract;

13.5.2 to keep all Confidential Information secure, and to disclose it only to those employees, consultants, directors and professional advisers who are directly involved in the Contract and who are subject to at least the same obligations of confidentiality in relation to the Confidential Information as the Supplier;

13.5.3 that Confidential Information shall at all times remain the property of NWL. Other than as set out elsewhere in the Contract, no licence is granted by any disclosure of Confidential

Information. Confidential Information may not be copied or reproduced by the Supplier without NWL's prior consent in Writing, and any permitted copies are also Confidential Information;

13.5.4 that except to the extent required by law, by governmental or regulatory requirements, or specifically authorised under the terms of the Contract, not to disclose Confidential Information to any third party without NWL's prior consent in Writing;

13.5.5 to ensure that all employees, agents and subcontractors of the Supplier are under an obligation no less onerous than the obligations on the Supplier set out in this Condition 13 to ensure that Confidential Information is kept and remains confidential at all times.

13.6 The obligations in this Condition 13 do not apply to any information which the Supplier can demonstrate was previously known to it or independently developed by it without the use of any Confidential Information.

13.7 Without prejudice to NWL's rights under any condition, warranty or other term implied into the Contract by statute or common law, or under any term of the Contract, the Supplier shall be liable for, and shall indemnify and keep indemnified NWL in full against all liability, loss, damages, cost and expenses (including indirect loss, claims, costs and legal expenses) awarded against or incurred or paid by NWL (except where the same results from NWL's negligence) as a direct result of any claim that the Goods or Services infringe, or their importation, use or resale infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by NWL or any wrongful act or omission of any of the Supplier's employees, agents or subcontractors in connection with the performance of the Services which gives rise to any liability of NWL to any third party.

13.8 The provisions of this Condition 13 shall survive the expiry or termination of the Contract.

14. RECORDS AND AUDIT

14.1 The Supplier shall keep and maintain until six years after the Contract has been completed full and accurate records and accounts of all Goods supplied and work done as part of the Supply. The Supplier shall also similarly keep and maintain detailed records of any expenditure which is reimbursable by NWL and of hours worked and costs incurred in connection with any employees of the Supplier paid for by NWL on a time charge and/or costs basis.

14.2 The Supplier shall keep such records and accounts in accordance with good accountancy practice.

14.3 The Supplier shall maintain robust and transparent financial and accounting processes and systems at all times in connection with the Supply. To achieve effective cost governance and control, NWL will carry out audits to verify and provide assurance that all costs have been properly incurred by the Supplier and that such costs are in accordance with the Contract.

14.4 The cost of any audit shall be borne by NWL save where the audit demonstrates (i) an inaccuracy exceeding 5% in the costs charged by the Supplier; (ii) a material inaccuracy in the information provided by the Supplier; or (iii) a breach of the Contract; in which case the costs shall be borne by the Supplier.

14.5 The Supplier shall provide NWL and/or its nominated representatives with appropriate information and details including electronic access to the Supplier's records and accounts in order to allow all cost and verification audits to be conducted and agreed in a timely manner.

14.6 The Supplier shall provide NWL and/or its duly authorised representatives with all reasonable cooperation and assistance in relation to audit by providing:

14.6.1 all information within the scope of the audit requested by NWL and/or its duly authorised representatives;

14.6.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Supply; and

14.6.3 access to the Supplier's personnel.

14.7 The Supplier is required to review and verify all sub-tier costs and inter-company charges to ensure they are properly incurred under the terms of the relevant subcontract/order. The Supplier shall ensure that NWL and/or its nominated representatives has access to suppliers at lower tier levels to audit/verify costs. The Supplier shall ensure that all contracts/orders placed with subcontractors and sub-suppliers incorporate provisions compliant with this Condition 14.

15. PUBLICITY

15.1 The Supplier will not without first obtaining NWL's consent in Writing in any way whatsoever advertise or publish the fact that the Supplier has contracted to supply the Goods or Services to NWL.

16. HEALTH AND SAFETY AND QUALITY ASSURANCE

16.1 The Supplier shall promptly notify NWL of any health and safety hazards which may arise in connection with the performance of the Contract.

16.2 The Supplier shall inform all persons used by the Supplier to provide the Supply at the Premises of all known health and safety hazards and shall instruct those persons in connection with any necessary safety measures.

16.3 Whilst on the Premises, the Supplier shall, and shall procure that its employees, agents and subcontractors shall, comply with any health and safety measures implemented by NWL or any third party including without limitation any measures in respect of NWL personnel and other persons working on the Premises.

16.4 The Supplier shall notify NWL immediately in the event of any incident occurring in the provision of the Supply on the Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.

16.5 In respect of all Goods and Services supplied the Supplier will maintain or observe quality control and Supplier quality assurance standards in accordance with the reasonable requirements of NWL.

16.6 The Supplier shall indemnify NWL against all actions, suits, claims, demands, losses, charges, costs and expenses which NWL may suffer as a result of or in connection with any breach of the provisions of this Condition 16.

17. TERMINATION

17.1 The rights of termination conferred by this Condition 17 are in addition to, and not in substitution for, the rights conferred by Conditions 7.3 and 18.

17.2 NWL shall be entitled to terminate the Contract in respect of all or part only of the Supply by giving not less than five (5) Working Days' notice in Writing to the Supplier prior to the commencement of performance, in which event NWL shall pay and the Supplier shall accept in settlement of all claims under the Contract such sum as shall reasonably compensate the Supplier for:

17.2.1 work done to date; and

17.2.2 raw materials or goods irrevocably ordered by the Supplier from a third party in and for the performance of the Contract prior to its termination (provided that the Supplier can demonstrate to the reasonable satisfaction of NWL that the Supplier will not be able to reuse them in its business).

For the avoidance of doubt the provisions of this Condition 17.2 shall not apply if the Contract is terminated by NWL pursuant to any negligence or default for which the Supplier is liable under the Contract.

17.3 NWL shall be entitled to terminate (i) the Contract and/or (ii) any other contracts between NWL and the Supplier in each case without liability to the Supplier and without prejudice to the other rights of NWL in any of the following circumstances:

17.3.1 the Goods supplied or Services performed by the Supplier are such that there is a material non-compliance with the Contract;

17.3.2 the Supplier becomes, in the reasonable opinion of NWL, insolvent; or

17.3.3 the Supplier shall have committed any breach of the Contract which either is not capable of remedy or, if such breach is capable of remedy, it shall have failed to remedy within five (5) Working Days (or within any other agreed timescale) of being required by NWL in Writing to do so.

17.4 The right of termination shall also exist where NWL reasonably considers that any of the events mentioned in Condition 17.3 is about to occur in relation to the Supplier and notifies the Supplier accordingly.

17.5 Termination, suspension or expiry of the Contract howsoever arising shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to NWL and shall not affect the continued operation of any provisions of the Contract which expressly or impliedly are intended to come into or continue in effect following termination or expiry of the Contract.

18. REMEDIES, LIABILITY AND INSURANCE

18.1 Without prejudice to any other right or remedy available to it, if any Goods or Services are not supplied or performed in accordance with the Contract, then NWL may require the Supplier to supply replacement Goods or Services, free of charge, which are in accordance with the Contract within five (5) Working Days of the date of NWL's notification (notwithstanding any acceptance thereof or payment therefor) and/or claim any applicable Liquidated Damages pursuant to Condition 6.

18.2 Any Liquidated Damages set out in the Contract have been agreed as a genuine pre-estimate of the loss that would be suffered by NWL in the circumstances in which they become payable. Liquidated Damages paid or deducted (whether or not up to any applicable cap) will count towards the overall cap on the Supplier's liability in respect of the Supply.

18.3 In connection with any liability in respect of which NWL may seek an indemnity under this Contract the Supplier must provide all such assistance or advice as NWL may reasonably request for the purpose of contesting or defending the same.

18.4 Neither the Supplier nor NWL shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations if the delay or failure is beyond that party's reasonable control. If, however, there is such a delay or failure on the part of the Supplier it shall forthwith repay to NWL all monies paid to it by NWL (and this remedy shall be cumulative with NWL's other remedies under the Contract).

18.5 Nothing in the Contract shall have the effect of excluding or limiting the liability of either party for:

18.5.1 death or personal injury to the extent it results from the negligence of that party or its employees, agents or subcontractors in the course of their engagement under the Contract; or

18.5.2 gross negligence, misrepresentation or fraud.

18.6 Subject to Conditions 18.5 and 20.5, where a claim arises under or in connection with the Contract the total liability of the Supplier for any single event or series of related events (whether in contract, tort (including negligence) or otherwise) will not at any time exceed five million pounds (£5,000,000).

18.7 The Supplier shall have in force and shall require any subcontractor to have in force:

18.7.1 employers' liability insurance in accordance with any legal requirements for the time being in force; and

18.7.2 public liability and/or professional indemnity insurance for such sum and range of cover as the Supplier reasonably deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than five million pounds (£5,000,000) for any one incident (or any other amount as may be specified in the Contract), unless otherwise agreed by NWL in Writing.

18.8 The liability of the Supplier in respect of the Supply will not be affected by the Supplier's use of agents, distributors, subcontractors or any third party whatsoever.

18.9 Any legal rights which NWL may have against the Supplier at the date of the Contract are expressly preserved and shall not be prejudiced or waived by reason of NWL entering into the Contract.

19. REQUIREMENTS OF NWL LICENCE

19.1 The Contract shall continue in full force and effect despite the making, or threat of making, of a Special Administration Order under the Water Industry Act 1991.

20. TRANSFER OF EMPLOYMENT

20.1 General

The words and phrases below in Condition 20.1 a) to o) refer to this Condition 20 only and shall have the following meanings:

- a) 'Accepted Transferring Employees' means those Transferring Employees whose names are set out on the Supplier's Provisional Staff List and/or the Supplier's Final Staff List as applicable in full compliance with the Supplier's obligations under Conditions 20.3 b) and 20.3 d);
- b) 'Employees' means those persons whose contracts of employment will be transferred pursuant to the TUPE Regulations to the Supplier or any Sub-Supplier in connection with any work carried by the Supplier or any Sub-Supplier pursuant to the Contract or whose contracts would transfer but for an objection by such person under Regulation (4) of the TUPE Regulations;
- c) 'Employee Information' means:
 - i. Details of each employee including their names, job title and description, salary, benefits, notice period for termination, date of birth, date of commencement of continuous service, pension arrangements (including without limitation details of any entitlement the employee may have to early or enhanced pension in the event of early retirement or redundancy), redundancy and severance arrangements (whether contractual or not), bonus or other incentive schemes, outstanding loans;
 - ii. Copies of the contract of employment, handbook and other documentation containing details of the terms and conditions of employment of the employee;
 - iii. Any agreement not yet implemented to change the remuneration or other terms and conditions of any employee;

- iv. Details of and copy documentation regarding any share scheme in which the employee participates or is entitled to participate;
 - v. Copies of any trade union recognition agreement and collective bargaining agreement in place relevant to the employee;
 - vi. Details of any claim or dispute relevant to the employee's employment; and vii. Employee liability information as defined by Regulation 11 of the TUPE Regulations;
- d) 'Employment Liabilities' means all actions, costs, claims, demands, expenses, payments, legal and other professional fees and expenses, and any other liabilities;
 - e) 'End Date' means the date or dates on which the Supplier ceases to provide the work or part of it;
 - f) 'Previous Supplier' means any Person who carried out work similar to that provided by the Supplier or any Sub-Supplier prior to the Supplier or Sub-Supplier;
 - g) 'Redeployed Supplier Personnel' means any Supplier Personnel re-deployed under Condition 20.3 h);
 - h) 'Replacement Supplier' means any third party appointed by NWL (including NWL if applicable) to carry out work that is substantially similar to the work and which are in substitution for the work following the termination or partial termination of the Contract;
 - i) 'Transfer Time' means one minute past midnight on the Start Date or where there is more than one Start Date the relevant Start Date as applicable;
 - j) 'Start Date' means the date or dates on which the Supplier becomes responsible to carry out work under the Contract;
 - k) 'Supplier Personnel' means all employees, staff, other workers, agents of the Supplier and/or of any Sub-Suppliers who are engaged in the carrying out work at any time during the Contract (including the Employees who have not objected to transferring to the Supplier under Regulation 4(7) of the TUPE Regulations);
 - l) 'Supplier's Final Staff List' means the list prepared by the Supplier of those Supplier Personnel who are employees and wholly or mainly assigned to the carrying out of the work or relevant part of the work at the relevant End Date;
 - m) 'Supplier's Provisional Staff List' means a list prepared and updated by the Supplier of those Supplier Personnel who are employees and wholly or mainly assigned to, the carrying out of the work or any part of the work at the date of preparation of the list;
 - n) 'Transferring Employees' means those employees whose contract of employment will be transferred to NWL or a Replacement Supplier or direct or indirect subcontractor thereof pursuant to the TUPE Regulations on expiry or termination of the Contract (in whole or in part);
 - o) 'TUPE Regulations' means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

20.2 Start

- a) The Supplier acknowledges that, pursuant to the TUPE Regulations, at the Transfer Time it will become the employer of the Employees.
- b) No later than 28 (twenty eight) days before the Transfer Time NWL shall use reasonable endeavours to provide the Supplier with a list of Employees and such of the Employee Information as is in NWL's possession in respect of those Employees. NWL gives no warranty as to the completeness or accuracy of the information supplied.

- c) The Supplier shall indemnify NWL on its own behalf and as trustee of any associated company of NWL and/or any Previous Supplier against any Employment Liabilities which NWL, any associated company of NWL and/or any Previous Supplier incurs (whether directly through any indemnity given to a third party in respect of such Employment Liabilities) in connection with or arising out of:
- i. any alleged or anticipatory breach of contract by the Supplier and/or any Sub-Supplier in respect of the Employees before the Transfer Time;
 - ii. any actual or proposed substantial change by the Supplier and/or any Sub-Supplier at any time in the working conditions or terms of employment of all or any of the Employees that taken individually or collectively are to the detriment of all or any of the Employees;
 - iii. any allegation that the Supplier or Sub-Supplier is a change in the identity of NWL of all or any of the Employees to the material detriment of any or all of the Employees;
 - iv. the termination of the employment of any of the Employees on or after the Transfer Time;
 - v. anything done or omitted to be done by the Supplier and/or any Sub-Supplier, or any other event or occurrence, in relation to the Employees at any time on or after the Transfer Time and before the relevant End Date;
 - vi. any breach by the Supplier and/or any Sub-Supplier of Regulation 13(4) of the TUPE Regulations; and vii. any act or omission of the Supplier and/or Sub-supplier or any other event or occurrence in relation to any Supplier Personnel (other than the employees) at any time before the relevant End Date.

20.3 Exit

- a) It is envisaged that subsequent to the commencement of the Contract the identity of the provider of the work (or any part of them) may change (whether as a result of termination of the Contract, or part, or otherwise) resulting in a transfer of the work in whole or in part to a Replacement Supplier (together referred to herein as 'Service Transfer'). The Parties acknowledge that the TUPE Regulations may apply to a Service Transfer and that, in such event, the Replacement Supplier would inherit liabilities in respect of the Transferring Employees.
- b) The Supplier agrees that, subject to compliance with the Data Protection legislation, it shall provide NWL or, at NWL's direction, a Replacement Supplier with the Supplier's Provisional Staff List and the Employee Information in respect of those persons on the Supplier's Provisional Staff List within 20 (twenty) Working Days of the earliest of:
- i. receipt of a notification of a Service Transfer or intended Service Transfer from NWL; or
 - ii. receipt of notification of a tender process in relation to the work or any part of them; or
 - iii. receipt or the giving of notice of termination of the Contract or any part of it; or
 - iv. the date which is 12 (twelve) months before the Expiry Date; or
 - v. receipt of a written request from NWL at any time.
- c) The Supplier shall identify those on each Provisional Staff List who will be Transferring Employees and provide the percentage assignment of such Employees to the relevant work that will be subject to the Service Transfer and shall co-operate promptly with any Supplier request for reasonable additional information to verify the percentage assignment of those on the Provisional Staff List or verify that they are in-scope to transfer under the TUPE Regulations. The Supplier shall provide an update of the information referred to at Condition 20.3 b) above at 3 (three) monthly intervals or more frequently if reasonably requested by NWL.
- d) At least 14 (fourteen) days prior to the End Date, the Supplier shall prepare and provide to NWL and/or, at the direction of NWL, to the Replacement Supplier, the Supplier's Final Staff List and the Employee Information in respect of those persons on the Supplier's Final Staff List. The

Supplier's Final Staff List shall identify which of the Supplier Personnel named are Transferring Employees.

- e) NWL may supply a copy of the Supplier's Provisional Staff List, Supplier's Final Staff List and the Employee Information in respect of such Employees to any person who has been invited to tender for the provision of all or any part of the work (or similar work) and to any Replacement Supplier, subject to compliance with the Data Protection Laws.
- f) The Supplier shall not and shall procure that any Sub-Suppliers shall not, save in the ordinary course of business or as required by law, at any time after any of the events in Conditions 20.3 b) i to iv above (whichever is the earlier), do any of the following without the prior written consent of NWL;
 - i. vary, increase, or purport or promise to vary or increase, the terms and conditions of employment or the benefits (whether contractual or discretionary) of any of the Supplier Personnel; or
 - ii. give notice to terminate or terminate the employment of any the Supplier Personnel; or
 - iii. recruit or assign to the work any new Supplier Personnel or increase the time spent by any Supplier Personnel on the work; or
 - iv. redeploy or assign away from the work any Supplier Personnel; or
 - v. amend any existing compulsory or voluntary collective agreement.
- g) At least 14 (fourteen) days before the relevant End Date, the Supplier shall, subject to compliance with Data Protection legislation, provide to NWL or any Replacement Supplier, in respect of each Transferring Employee, their:
 - i. pay slip data for the most recent month;
 - ii. cumulative tax paid;
 - iii. tax code;
 - iv. voluntary deductions from pay;
 - v. bank or building society account details for payroll purposes;
 - vi. home address; and
 - vii. any other employment records reasonably required by NWL or Replacement Supplier for the effective continued employment of the Transferring Employee.
- h) If requested by NWL, the Supplier shall and shall procure that any Sub-Supplier shall use all reasonable endeavours to re-deploy any Supplier Personnel on or prior to the End Date on activities other than the Contract. The Supplier shall and shall procure that any Sub-Supplier shall use reasonable endeavours to procure that any Supplier Personnel redeployed cease to be Transferring Employees. If requested by NWL, the Supplier shall use reasonable endeavours to procure an objection under Regulation 4(7) of the TUPE Regulations from any Supplier Personnel redeployed by the Supplier or Sub-Supplier to becoming employed by NWL or relevant Replacement Supplier. The Supplier shall provide NWL or Replacement Supplier with a copy of any such objection obtained.

20.4 Exit Indemnities

- a) Where the TUPE Regulations apply to a Service Transfer the Supplier is responsible and shall ensure that its Sub-Suppliers are responsible for all emoluments and outgoings (including without limitation PAYE, NICs, all contributions to retirement benefit schemes and all payments in respect of holiday) accrued and payable to or in respect of the Transferring Employees in respect of the period up to and including the relevant End Date and NWL or Replacement Supplier is

responsible for all emoluments and outgoings accrued and payable to or in respect of the Accepted Transferring Employees in respect of the period after the relevant End Date.

- b) The Supplier shall indemnify NWL (on its own behalf and as trustee of any associated company of NWL and/or any Replacement Supplier) and any Replacement Supplier against any Employment Liabilities which NWL, any associated company of NWL and/or any Replacement Supplier or any direct or indirect subcontractor of any Replacement Supplier incurs (whether directly through any indemnity given to a third party in respect of such Employment Liabilities) in connection with or arising out of:
- i. the termination of the employment of any Transferring Employees before or on the relevant End Date;
 - ii. anything done or omitted to be done by the Supplier and/or any Sub-Supplier or any other event or occurrence in relation to the Transferring Employees at any time between the Transfer Time and the relevant End Date;
 - iii. any emoluments and outgoings due to the Transferring Employees (including without limitation all wages, bonuses, commissions, PAYE, National Insurance contributions, pension contributions, holiday pay and otherwise or relevant part thereof) accrued in respect of any time prior to the relevant End Date including without limitation any payment which NWL or Replacement Supplier or subcontractor makes or will be required to make to any Transferring Employee in respect of holiday accrued prior to the relevant End Date but taken after the relevant End Date;
 - iv. the employment or termination of employment, anything done or omitted to be done by the Supplier and/or any Sub-Supplier or any other event or occurrence at any time in relation to:
 - any Redeployed Supplier Personnel; and
 - any Supplier Personnel who is not a Transferring Employee;
 - v. any breach of Regulations 13 or 14 of the TUPE Regulations, save to the extent that such Employment Liabilities arise as a result of a breach by NWL and/or any Replacement Supplier of its or their obligations under Regulation 13 (4) of the TUPE Regulations.
- c) If any person who is not an Accepted Transferring Employee claims or it is determined that his contract of employment has been transferred from the Supplier or any Sub-Supplier to NWL or any associated company of NWL or a Replacement Supplier or any direct or indirect subcontractor thereof pursuant to the TUPE Regulations or otherwise or claims or it is determined that any liability regarding his employment has transferred then:
- i. NWL or the Replacement Supplier will, within 20 (twenty) Working Days of becoming aware of that fact, give notice in Writing to the other party;
 - ii. the Supplier may offer or may procure the offer of employment to such person within 10 working days of provision or receipt of the notice referred to in Condition 20.4 c) i) above;
 - iii. after the period referred to in Condition 20.4 c) ii) has elapsed NWL or Replacement Supplier or direct or indirect subcontractor thereof may within 20 (twenty) Working Days terminate or give notice to terminate the employment of such person;
 - iv. The Supplier shall indemnify NWL (on its own behalf and as trustee of any associated company of NWL and/or any Replacement Supplier) and any Replacement Supplier against any Employment Liabilities which NWL, any associated company of NWL and/or any Replacement Supplier or any direct or indirect subcontractor of any Replacement Supplier incurs (whether directly through any indemnity given to a third party in respect of such Employment Liabilities) in connection with or arising out of:

- any failure by NWL or Replacement Supplier to employ or engage such person from the relevant End Date;
 - the termination of such person's employment by NWL or Replacement Supplier or direct or indirect subcontractor thereof under Condition 20.4 c) iii above; and
 - the employment of such person by NWL or Replacement Supplier or direct or indirect subcontractor thereof in respect of the period up to such termination.
- d) NWL will and will use reasonable endeavours to procure that any Replacement Supplier complies with its obligations under Regulation 13 (4) of the TUPE Regulations to inform the Supplier or Sub-Supplier regarding any measures envisaged in connection with a Service Transfer.

20.5 No TUPE

- a) In the event of a Service Transfer to which the TUPE Regulations do not apply the following provisions shall apply:
- i. NWL or the Replacement Supplier can, at its discretion, make to any of the Employees listed on the Supplier's Provisional Staff List or any Supplier Personnel wholly or mainly assigned to work under the Contract an offer, in Writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity following the relevant End Date;
 - ii. If an offer has been made and accepted by any employee or worker, the Supplier shall permit the employee or worker to leave his or her employment, as soon as practicable which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.
- b) If the neither NWL nor the Replacement Supplier makes an offer of employment or if the employee does not accept an offer of employment made by NWL or Replacement Supplier, the employee shall remain employed by the Supplier or its Sub-Suppliers and all Employment Liabilities in relation to the employee shall remain with the Supplier.

21. STATUS OF SUPPLIER

21.1 In carrying out the Contract the Supplier shall be acting as principal and not as the agent of NWL. Accordingly, the Supplier shall not (and shall procure that its agents and servants shall not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of NWL.

22. STATUS OF CONDITIONS, ASSIGNMENT AND SUBCONTRACTING

22.1 In the event of any conflict between the provisions of the standard terms and conditions of purchase set out in this document and any special terms and conditions agreed in Writing between NWL and the Supplier (including, without limitation, any set out in the Contract) the provisions of such special terms and conditions shall prevail.

22.2 NWL may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of the group of companies to which it belongs, and any act or omission of any such other member shall be deemed to be the act or omission of NWL.

22.3 The Supplier shall not assign or subcontract any part of the Contract without the prior consent in Writing of NWL.

23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

23.1 Other than as set out in Condition 20 or as otherwise agreed, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any terms of the Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

24. NOTICES

24.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

25. WAIVER AND INVALIDITY

25.1 No waiver by NWL of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

25.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

26. LAW AND DISPUTES

26.1 The Contract shall be governed by and construed in accordance with English law and subject to Conditions 26.2, 26.3 and 26.4, each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the Contract.

26.2 Subject to Condition 26.4, the parties agree that any disputes or disagreements will be resolved in the following way:

26.2.1 by a meeting or other discussion between the NWL person named on the Purchase Order (or an alternative nominated by NWL) and a representative of the Supplier, held at the reasonable request of either party;

26.2.2 if no agreement is reached within ten (10) Working Days of the first request for the meeting or discussion referred to in Condition 26.2.1, the dispute shall, at the request of either party, be escalated to the Head of Procurement of NWL and a representative of the Supplier of comparable rank and position;

26.2.3 if no agreement is reached within ten (10) Working Days of the request referred to in Condition 26.2.2, the dispute shall, at the request of either party, be escalated to an appropriate director of NWL and a director or equivalent of the Supplier;

26.2.4 if no agreement is reached within thirty (30) Working Days after the first request for the meeting or discussion referred to in Condition 26.2.1, the dispute may be referred for resolution in accordance with Condition 26.3.

26.3 Provided both parties so agree, the parties shall together refer the dispute to the Centre for Dispute Resolution ("CEDR") for resolution in accordance with such of the Alternative Dispute Resolution ("ADR") Procedures offered by the CEDR as the CEDR considers appropriate in all the circumstances. If either party does not agree to such referral either of them may commence legal proceedings as it sees fit.

26.4 In the event of a referral under Condition 26.3 above, the parties agree to be bound by the rules of the CEDR relating to the conduct of the relevant ADR proceedings as if the same were incorporated in the Contract. Each party shall bear its own costs incurred in the relevant ADR proceedings, and one half of the fees and expenses of the CEDR unless a different agreement is reached as part of any settlement arrived at as a result of such proceedings.

26.5 Either party may refer disputes involving Confidential Information, intellectual property matters and debt to the English courts immediately.

27. NON-DISCRIMINATION, EQUALITY AND DIVERSITY

27.1 In carrying out the Contract, the Supplier shall, and shall procure that its employees, agents or subcontractors shall:

27.1.1 not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age, disability, gender reassignment, marriage and civil partnerships, pregnancy, paternity and maternity, race, religion or belief, sex or sexual orientation or otherwise) and shall take all reasonable steps to ensure that its employees, agents or subcontractors similarly do not unlawfully discriminate;

27.1.2 without prejudice to the generality of Condition 27.1.1, not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and all other relevant legislation and any statutory modification or re-enactment of such legislation;

27.1.3 where, in connection with the Contract, the Supplier, its employees, agents or subcontractors, or its staff are required to carry out work on NWL's premises or alongside NWL's employees on any other premises, comply with NWL's own employment policies and codes of practice relating to equality and diversity in the workplace, copies of which are published;

27.1.4 in complying with Conditions 27.1.1, 27.1.2 and 27.1.3 above, always treat NWL's customers, employees, other contractors and other stakeholders with courtesy, consideration, dignity and respect;

27.1.5 in the event that the Supplier enters into any subcontract or linked agreement in connection with the Contract or any aspect of the Supply, impose equality and diversity obligations on its subcontractors and other associates in terms substantially similar to those contained in the Contract;

27.1.6 notify NWL in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of the Contract being in contravention of the said Act, the Supplier shall, free of charge:

- a) provide any information requested in the timescale required;
- b) attend any meetings as required and permit its staff to attend;
- c) promptly allow access to and investigation of any documents or data deemed by NWL to be relevant;
- d) appear and allow its staff to appear as witnesses in any ensuing proceedings;
- e) co-operate fully and promptly in every way reasonably required by the person or body conducting such investigation during the course of that investigation;

27.1.7 where any investigation is conducted or proceedings are brought under the said Act which arise directly or indirectly out of any act or omission of the Supplier, its employees, agents or subcontractors, or the Supplier's staff and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify NWL against all costs, claims, damages, charges and expenses (including, without limitation, legal and administrative expenses) arising out of or in connection with any such investigation or proceedings incurred by NWL.

27.2 Should the Supplier, its employees, agents or subcontractors breach any part of this Condition 27 then NWL shall be entitled to terminate the Contract with immediate effect by notice in Writing to the Supplier.

28. MODERN SLAVERY AND HUMAN TRAFFICKING

28.1 In carrying out the Contract, the Supplier shall, and shall procure that its employees, agents or subcontractors shall, not commit any offence under the Modern Slavery Act 2015.

28.2 Should the Supplier, any of its employees, agents or subcontractors involved in carrying out the Contract, commit an offence under the Modern Slavery Act 2015 then NWL shall be entitled to terminate the Contract with immediate effect by notice in Writing to the Supplier and recover from the Supplier any loss resulting from such termination.

29. BLACKLISTING

29.1 In carrying out the Contract, the Supplier shall, and shall procure that its employees, agents or subcontractors shall, not commit any offence under the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992.

29.2 Should the Supplier, any of its employees, agents or subcontractors involved in carrying out the Contract, commit an offence under the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, then NWL shall be entitled to terminate the Contract with immediate effect by notice in Writing to the Supplier and recover from the Supplier any loss resulting from such termination.

30. LIVING WAGE

30.1 'Living Wage' means the UK Living Wage as set out annually in November each year, or as amended from time to time, by the Living Wage Foundation (Charity Number 1107264).

30.2 The Supplier agrees to:

- a) pay all its personnel who are directly employed by the Supplier in carrying out the Contract; and
- b) ensure all employees of its agents or subcontractors in carrying out the Contract are paid not less than the Living Wage for the term of the Contract provided the following conditions are met:

The employees, agents or subcontractors (as applicable) engaged in carrying out the Contract (excluding apprentices and interns):

1. are aged 18 or over;
2. work on NWL's premises, and/or any site or property which is not directly owned or in control by NWL (and such premises are based in the United Kingdom);
3. work for at least 2 (two) hours in any working day; and
4. work for at least 8 (eight) consecutive weeks in any calendar year.

30.3 The Supplier agrees to implement any change to the Living Wage by the Living Wage implementation date.

30.4 The Supplier undertakes to provide and make available to NWL on reasonable request all information necessary for NWL to confirm that the Supplier is complying with its obligations for payment of the Living Wage under the Contract.

30.5 In the event of non-compliance with this Condition 30 by the Supplier, the Supplier shall act to resolve any non-compliance and will resolve in accordance with NWL's instructions, where these are issued, to resolve any non-compliance, which shall include backdating any applicable payments to the Contract start date. The backdating of payments shall be undertaken entirely at the cost of the

Supplier, and the Supplier shall have no right to recover such costs of non-compliance or the costs of resolving non-compliance from NWL. In the event the Supplier has not resolved the noncompliance within a reasonable time (as determined by NWL in its sole discretion), then NWL shall be entitled to terminate the Contract with immediate effect by notice in Writing to the Supplier and recover from the Supplier any loss resulting from such termination.

Annex A

Section 1 – Data Protection

1. **Conflict with Data Protection Requirements and Standard Terms**

1.1 The parties agree that nothing in the Contract shall require either party to do or refrain from doing anything (including disclosing or providing access to Personal Data, or curtailing that party's use of Personal Data) which is incompatible with its rights and obligations under the Data Protection Requirements, and any provision of the Contract which purports to create rights or impose obligations in contravention of this paragraph 1 shall be deemed to be subject to this paragraph 1.

2. **Controller provisions**

2.1. The Parties acknowledge that they are both Controllers of the Relevant Data.

2.2. The parties warrant and undertake with each other that they will:

2.2.1. process any shared Relevant Data in compliance with the Data Protection Requirements;

2.2.2. prior to any transfer of the shared Relevant Data:

2.2.2.1. ensure that it has provided appropriate information to all relevant Data Subjects as required by Articles 13 and 14 of the GDPR and (if appropriate) consents in place, to enable lawful transfer of the Relevant Data to the other party (including any notified onward transferees) for the permitted purposes (including by identifying an appropriate legal basis for the proposed transfer);

2.2.2.2. as a minimum, any data collection form or privacy notice used by a party to collect Personal Data from Data Subjects which are included within the Relevant Data, will contain a privacy notice informing the Data Subject of:

2.2.2.2.1. the identity of the Controller(s);

2.2.2.2.2. the identity of any data protection representative it may have appointed;

2.2.2.2.3. the purpose or purposes for which their Personal Data will be shared and / or processed;

2.2.2.2.4. clear reference to the relevant parties involved in the Processing of the shared Relevant Data, and an explanation of the relevant sharing of Personal Data between them. This includes giving notice that, on the termination of the Contract, Personal Data relating to them may be retained by the other party; and,

2.2.2.2.5. any other information which is necessary having regard to the specific circumstances in which the Personal Data is, or is to be, shared and / or processed, to enable fair processing in respect of each Data Subject.

2.2.3. process any shared Relevant Data in accordance with, and only to the extent necessary for, the purposes appropriately notified to the relevant Data Subjects;

2.2.4. promptly inform the other party, to the extent it is permitted to do so, of any inaccuracies in the shared Relevant Data;

2.2.5. use compatible technology for the processing of shared Relevant Data to ensure that there is no lack of accuracy resulting from personal data transfers;

- 2.2.6. retain the shared Relevant Data only for so long as is necessary for the purposes identified to the relevant Data Subjects and in accordance with such periods as may be set out at paragraph 6 of Section 2, or as may be agreed by the parties from time to time;
- 2.2.7. respond within a reasonable time and as far as reasonably possible to enquiries from any relevant Data Protection Authority in relation to any shared Relevant Data;
- 2.2.8. respond to any exercise by a Data Subject of any rights granted by the GDPR;
- 2.2.9. where applicable, pay their registration fees at all relevant Data Protection Authorities to process any shared Relevant Data for the purpose of the Contract; and
- 2.2.10. take all appropriate steps to implement and maintain the Security Requirements.

3. **Joint Controller provisions**

3.1. **THIS PARAPGRAPH ONLY APPLIES WHERE THE PARTIES ARE NOT ACTING AS JOINT CONTROLLERS:** The parties have decided that they are not joint controllers in relation to the Relevant Data. If the Services change, and / or the manner in which the Relevant Data is shared and used by the parties changes, such that the parties are or may be joint controllers, they shall each use reasonable efforts to agree and document in a transparent manner, relevant amendments to this Agreement to reflect any necessary provisions to govern their joint controller relationship appropriately under European DP law, unless their responsibilities are determined by applicable European DP Law.

3.2. **THIS PARAPGRAPH ONLY APPLIES WHERE THE PARTIES ARE ACTING AS JOINT CONTROLLERS:** The parties have decided that they are joint controllers in relation to the Relevant Data for the purposes of Article 26 of the GDPR. In this regard the parties have agreed the following:

- 3.2.1. The Contract sets out the terms of the joint controller arrangement between them.
- 3.2.2. The contact point of each party for Data Subjects are stated at paragraph 7 of Section 2 (or as notified to the other party in writing).
- 3.2.3. The parties shall provide the Data Subjects with the information required by Articles 13 and 14 GDPR, in accordance with paragraph 2.2.2.
- 3.2.4. A summary of the agreement (which captures the essence of the arrangement, to the extent that it relates to the parties acting as joint controllers), shall be made available to the Data Subject if requested.
- 3.2.5. Prior to sharing the Relevant Data, the parties shall establish, and then maintain for the duration of the Contract, a joint governance team with an equal number of representatives from each party to jointly monitor the impact of the data sharing, and the effectiveness of the arrangements, including any security measures agreed between the parties.
- 3.2.6. The parties acknowledge that irrespective of the terms of this joint controller arrangement, the Data Subject may exercise his or her rights under the GDPR in respect of and against each of the joint controllers.

4. **Personal Data Breaches**

4.1. If a party becomes aware of a Personal Data Breach in relation to any shared Relevant Data, that party shall notify the other party without undue delay and in any event within 24 (twenty four) hours of becoming aware of that Personal Data Breach, by secure email (in the case of notice to NWL to data.protection@nwl.co.uk with 'Data Security Event' in the subject line), and provide the party's name, a contact name, a contact phone

number and contact email address in the body of email, on which the receiving party can reach the notifying party by return and at any time 24/7/365. The notifying party shall Securely provide the receiving party with further information about the breach in phases as information becomes available.

- 4.2. The notifying party shall Securely provide the receiving party with:
 - 4.2.1. a description of the nature of the Personal Data Breach in clear and plain language including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Relevant Data records concerned;
 - 4.2.2. the name and contact details of the notifying party's data protection officer or other contact point where more information can be obtained;
 - 4.2.3. a description of the likely consequences of the Personal Data Breach;
 - 4.2.4. a description of the measures taken or which the notifying party proposes should be taken to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects; and
 - 4.2.5. the following, where the Personal Data Breach is likely to result in a High Risk:
 - 4.2.5.1. the technical and organisational protection measures that were applied to the Relevant Data affected by the Personal Data Breach by the notifying party, in particular those that render the Relevant Data unintelligible to any person who is not authorised to access it, such as encryption;
 - 4.2.5.2. whether any such measures taken or to be taken will ensure that the High Risk is no longer likely to materialise; and
 - 4.2.5.3. whether, in the notifying party's view, communication to the Data Subject of the Personal Data Breach would involve disproportionate effort.
- 4.3. Where a party becomes aware of a Personal Data Breach in respect of its own systems or data which is in relation to any shared Relevant Data, and informs the other party of it, that other party shall provide the notifying party with the information in paragraph 4.2 above and with the notice under paragraph 4.1 above where it is possible to do so, and in any event within 24 (twenty-four) hours of that party informing the other party.
- 4.4. If and to the extent that it is not possible to provide the notifying party with all such information within 24 (twenty-four) hours, the receiving party shall provide the remaining information within 48 (forty-eight) hours unless another time period is agreed between the parties.
5. **Personnel**
 - 5.1. The Supplier shall, in relation to its personnel (whether employees or not):
 - 5.1.1. take all reasonable steps to ensure the reliability of such personnel that may have access to the Relevant Data;
 - 5.1.2. ensure that they are adequately trained to comply with all applicable legal requirements; and,
 - 5.1.3. ensure that they are subject to appropriate written contractual obligations concerning the processing of the shared Relevant Data (including obligations of confidentiality).

6. **Records**

The Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out in relation to the Relevant Data. Such records shall include all information necessary to demonstrate its and NWL's compliance with this Annex A, the information referred to in Articles 30(1) of the GDPR and such other information as NWL, and its regulators, may reasonably require from time to time. The Supplier shall make copies of such records available to NWL promptly on request from time to time, and NWL may share such records with its regulators or relevant authorities where appropriate.

7. **Extra-EEA transfer**

7.1. The parties warrant and undertake with each other that they will not disclose or transfer any shared Relevant Data to a third party data controller located outside the EEA unless:

- 7.1.1. it complies with the provisions of the Data Protection Requirements, including by ensuring there are appropriate safeguards in place to govern such transfer;
- 7.1.2. Data Subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which any shared Relevant Data is exported may have different data protection standards; or
- 7.1.3. with regard to onward transfers of Relevant Data, Data Subjects have given their explicit consent to the onward transfer.

7.2. **THIS PARAGRAPH ONLY APPLIES WHERE PERSONAL DATA WILL BE TRANSFERRED OUTSIDE OF THE EEA:** Where the parties wish to process the Relevant Data outside the EEA on the basis of appropriate safeguards under paragraph 7.1.1, a party may only process, or permit the processing, of the Relevant Data outside the EEA under the following conditions:

- 7.2.1. That party is processing the Relevant Data in a territory which is subject to a current finding by the European Commission (or in the event of Brexit, the ICO) under the Data Protection Requirements that the territory provides adequate protection for the privacy rights of individuals. That party must notify the other party in writing of the territory that is subject to such an adequacy finding; or
- 7.2.2. That party participates in a valid cross-border transfer mechanism under the Data Protection Requirements, so that that party (and, where appropriate, the other party) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the GDPR. That party must notify the other party in writing in advance, the transfer mechanism that enables the parties to comply with the restriction on cross-border transfers under the Data Protection Requirements and that party must immediately inform the other party of any change to that status; or
- 7.2.3. The parties have agreed, and recorded in the Contract or in writing, that the transfer otherwise complies with the Data Protection Requirements.

7.3. If any transfer of the Relevant Data outside the EEA requires execution of the Standard Contractual Clauses in order to comply with the Data Protection Requirements, the parties will complete all relevant details in, and execute, the SCC contained in Section 3 below (including by selecting and initialling the option at clause II(h)), and take all other actions required to legitimise the transfer. For the purposes of the SCC, the parties have agreed that:

- 7.3.1. If there is a conflict between the SCC and the Contract, the SCC shall prevail to the extent of such conflict;

- 7.3.2. The option at clause II(h) of the SCC, of the applicable law to the Supplier as data importer, will be English law;
- 7.3.3. Section 2 of this Annex A shall be read as Annex B of the SCC; and,
- 7.3.4. Execution of the Contract by both parties shall constitute execution of the SCC.

8. **Data Protection Impact Assessments**

- 8.1. If the Supplier has already carried out a data protection impact assessment ("DPIA") in relation to the Services of a similar scope of Services or product, it shall provide the resulting assessment to NWL on NWL's request, to inform NWL's own DPIA.
- 8.2. The Supplier shall co-operate fully with NWL in carrying out the DPIA and in any consultation with the Information Commissioner, and any organisation or individuals which NWL may reasonably determine should be consulted.
- 8.3. The Supplier shall assist NWL, where necessary and upon request, in ensuring compliance with the obligations deriving from the carrying out of DPIAs and from prior consultations with the Information Commissioner.

9. **Mutual assistance**

- 9.1. The parties agree to provide each other with reasonable assistance with regard to:
 - 9.1.1. any Subject Access Requests received as is reasonably necessary;
 - 9.1.2. to respond to any other queries, exercise of individual rights or complaints from Data Subjects;
 - 9.1.3. to respond to any queries, information requests or complaints from the Information Commissioner or other competent authority.
- 9.2. Where the Supplier assists NWL with NWL's compliance with European DP law under or pursuant to the Contract, that assistance will be at no additional cost to NWL.

10. **Indemnity**

- 10.1. The Supplier shall indemnify, keep indemnified and defend at its own expense NWL and any NWL group company against all costs, claims, damages or expenses incurred by NWL or any NWL group company or for which NWL or any NWL group company agree to pay or may become liable due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this Annex A or the Data Protection Requirements.
- 10.2. Any limitation of liability set out in the Contract will not apply to the indemnity at paragraph 10.1.
- 10.3. Without prejudice to the generality of the indemnity at paragraph 10.1 or any specific terms in the Contract which exclude types of loss, NWL may claim the following types of costs, claims, damages or expenses:
 - 10.3.1. the costs of an investigative, corrective or compensatory action required by the ICO, or the defence of a proposed or actual enforcement taken by the Information Commissioner or other competent authority; and
 - 10.3.2. losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach

notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

10.4. NWL may enforce the indemnity at paragraph 10.1 on behalf of any NWL group company.

11. **Change in Data Protection Requirements**

11.1. In the event that there is a change during the Term in:

11.1.1. applicable European DP Law, UK DP Law or other Data Protection Requirements in England (whether also in Wales, Scotland and/or Northern Ireland or not);

11.1.2. (where applicable) the available mechanisms or safeguards used to transfer Relevant Data to a Restricted Country;

11.1.3. (where applicable) the available standard contractual clauses which are relevant to either party's or both parties' Processing of Relevant Data; and/or

11.1.4. (given the particular difficulty in foreseeing the future legal landscape during and after Brexit, including the precise nature of a Brexit Event) some other event or situation or happening

and NWL reasonably determines that the Contract is, wholly or in part, no longer appropriate in the light of Data Protection Requirements, NWL shall notify the Supplier of its determination and (a) each party shall promptly take such reasonable and appropriate steps necessary to ensure its ongoing compliance with applicable Data Protection Requirements, and (b) the Supplier shall negotiate with NWL in good faith to enter promptly into such variation to the Contract as is necessary to ensure the parties' ongoing compliance with applicable Data Protection Requirements.

12. **Costs**

Where the Supplier assists NWL with NWL's compliance with European DP Law under or pursuant to the Contract, that assistance will be at no additional cost to NWL.

Section 2 – Description of the transfer

1. **Data Subjects**

The Personal Data transferred concern the following categories of Data Subjects:

To be confirmed in Writing by NWL.

2. **Purposes of the transfer(s)**

The transfer is made for the purposes of the Supplier providing the Services (as defined in the Contract).

3. **Categories of data**

The Personal Data transferred concern the following categories of data:

To be confirmed in Writing by NWL.

4. **Recipients**

The Personal Data transferred may be disclosed only to the following recipients or categories of recipients:

To be confirmed in Writing by NWL.

5. **Sensitive data (if appropriate)**

The Personal Data transferred concern the following categories of sensitive data:

- Special categories of Personal Data: To be confirmed in Writing by NWL.
- Criminal offence data: To be confirmed in Writing by NWL.

6. **Additional useful information**

Retention periods: The Supplier shall retain the Relevant Data for the periods confirmed in Writing by NWL

7. **Contact points for data protection enquiries**

NWL: To be confirmed in Writing by NWL.

Supplier: To be confirmed in Writing by the Supplier.

Section 3 (if applicable) – Standard Contractual Clauses for Controller to Controller Transfers outside the EEA



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship

Unit C.3: Data protection

SET II

**Standard contractual clauses for the transfer of personal data from the Community to third countries
(controller to controller transfers)**

Data transfer agreement

between

NWL (as defined above)(name)

As above(address and country of establishment)

hereinafter “data exporter”

and

The Supplier (as defined above)(name)

As above(address and country of establishment)

hereinafter “data importer”

each a “party”; together “the parties”.

Definitions

For the purposes of the clauses:

- a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) “the data exporter” shall mean the controller who transfers the personal data;
- c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;
- d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.

- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data, at its option, in accordance with:
 - i. the data protection laws of the country in which the data exporter is established, or
 - ii. the relevant provisions¹ of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and

¹ "Relevant provisions" means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data², or

- iii. the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: Option I (the data protection laws of the country in which the data exporter is established)

Initials of data importer: [Supplier to initial here]

- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
 - i. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
 - ii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
 - iii. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
 - iv. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

III. Liability and third party rights

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

V. Resolution of disputes with data subjects or the authority

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

² However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected.

VI. Termination

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
 - i. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
 - ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
 - iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
 - iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
 - v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated:

FOR DATA IMPORTER

FOR DATA EXPORTER

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ANNEX A TO THIS SECTION 3

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B of this Section 3 or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to "opt-out" from having his data used for such purposes.
8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
 - a)
 - i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and
 - ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.
 - or
 - b) where otherwise provided by the law of the data exporter.

ANNEX B TO THIS SECTION 3
DESCRIPTION OF THE TRANSFER

(To be completed by the parties)

Data subjects

The personal data transferred concern the following categories of data subjects:

SEE SECTION 2

Purposes of the transfer(s)

The transfer is made for the following purposes:

SEE SECTION 2

Categories of data

The personal data transferred concern the following categories of data:

SEE SECTION 2

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

SEE SECTION 2

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

SEE SECTION 2

Data protection registration information of data exporter (where applicable)

Not applicable

Additional useful information (storage limits and other relevant information)

SEE SECTION 2

Contact points for data protection enquiries

SEE SECTION 2