



NORTHUMBRIAN WATER LIMITED

PURCHASE ORDER

STANDARD TERMS & CONDITIONS OF PURCHASE FOR GOODS AND SERVICES

1. INTERPRETATION

1.1. In these Conditions:

"Business Hours"	means the period from 08:30 to 17:30 on a Working Day;
"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 either NWL or the Supplier or the Supply (including, without limitation, the Specifications) and that is acquired by the other party 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 Specifications and these Conditions;
"Contract Manager"	has the meaning given to it under Condition 2.5;
"Data Protection Legislation"	means (i) the UK-GDPR and 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 UK-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;
"Fees"	means the fees payable for the Supply;
"Force Majeure"	means any act, event or circumstance or combination of acts, events or circumstances, which could not be prevented and reasonably planned for or avoided and which are not within a party's reasonable control including without limitation an act of God, fire, explosion, flood, epidemics or pandemics, acts of terrorism, nuclear contamination or sonic boom, war, rebellion, riot, civil commotion, armed conflict, acts of Government, public authority or devolved administration (including without limitation the imposition of travel restrictions, enforcing 'lock down' areas within the UK and/or the banning of mass participation events and other public gatherings) or trade embargo, malicious damage, sabotage, official strike or similar official dispute (except in relation to the workforce of the party seeking to rely on force majeure) or shortage of fuel on a national level;
"Goods"	means any materials or goods supplied by the Supplier in connection with any Services and/or described in the Contract;
"Incident"	means any vulnerability, Virus or security incident which (i) may affect the Supplier's network and information systems such that it could potentially affect NWL or NWL's network and information systems or (ii) is reported to the Supplier by NWL;
"Indirect Costs"	means all other costs incurred by the Supplier in supplying Goods, Services or works to NWL, including but not limited to salary/wages, bonuses, training,

	redundancy, materials, tools, rent, transport, security, labour, shipping/posting, direct materials;
"Liquidated Damages"	means such sums (if any) described as such in the Contract;
"Mandatory Policies"	means NWL's policies listed in Condition 3, as amended by notification to the Supplier from time to time;
"NWL Materials"	has the meaning given to it under Condition 9.1;
"Premises"	means the address(es) where the Services are to be performed and/or the Goods are to be delivered as stated in the Contract (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 any laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including but not limited to engaging in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
"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;
"Services"	means any services described in the Contract;
"Specifications"	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;
"Supplier"	means the person, firm or company named in the Contract as being responsible for the Supply to NWL;
"Supply"	means the supply of the Goods and Services by the Supplier under the Contract;
"Term"	the duration of the Supply under this Contract, or such other term as may be specified in Writing between the parties, whether in the Purchase Order or otherwise;
"UK-GDPR"	the General Data Protection Regulation (EU) 2016/679 as adopted into English law under the European Union (Withdrawal) Act 2018, and as supplemented by the Data Protection Act 2018;
"Virus"	means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose;
"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 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 AND CONTRACT MANAGEMENT

2.1. 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 any 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.

2.2. No variation of the Contract shall be effective unless it is in Writing and signed by the parties, or their authorized representatives.

2.3. 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.

2.4. 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.

2.5. Each party shall appoint a Contract Manager to manage the relationship with the other party. Without prejudice to the parties' rights and obligations, the Contract Managers shall meet (including virtual meetings) at least quarterly in order, amongst other things, to discuss any matter(s) relating to the Supply.

2.6. Any change to a party's Contract Manager shall be notified in writing to the other party as soon as possible following such change.

2.7. The Supplier shall provide, on request, to NWL a report detailing all of the Goods and Services supplied under this Contract as well as any other management information or progress reports as agreed between NWL and the Supplier.

3. STANDARD OF SUPPLY AND PREVENTION OF CORRUPTION

3.1. The Goods shall, as provided in these Conditions, be as specified in the Purchase Order and the Supplier shall perform the Services at all times in accordance with the Purchase Order and, if no higher standard is specified therein, to the standard referred to within Condition 3.4.3 below.

3.2. In performing its obligations under the Contract, the Supplier shall:

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- 3.2.1. 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; and
 - 3.2.2. have the following policies in place which are reflective of the policies in place at NWL:
 - 3.2.2.1. drug and alcohol policy including the ability for NWL to engage in for cause testing and will, if there is a positive result refund the cost of any testing;
 - 3.2.2.2. modern slavery and human trafficking policy;
 - 3.2.2.3. anti-bribery policy;
 - 3.2.2.4. anti harassment policy including third party harassment;
 - 3.2.2.5. ensure personnel engaged by the Supplier under this Contract with access to SCADA, network and telemetry systems, working in security, working in the data centre and information services and those who are responsible for multiple critical national infrastructure sites have baseline personnel security standard, all others have a basic disclosure and barring service (DBS) check; and
 - 3.2.2.6. communicate to NWL any concerns over convictions of personnel supplied by the Supplier.

A breach of this Condition 3.2 shall constitute a material breach of the Contract.

- 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 Specifications (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. The Supplier shall notify NWL in Writing if it becomes aware of any breach of this Condition, or if it has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract;
 - 3.4.5. it has, and shall maintain, in place throughout the term of the Contract adequate procedures in place to prevent the occurrence of a Prohibited Act. For the purposes of this Condition, the meaning of adequate procedures shall be determined in accordance with section 7 (2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act). For the avoidance of doubt, (i) a breach by the Supplier of this Condition or (ii) the occurrence of a Prohibited Act shall constitute a material breach of this Contract by the Supplier; and

- 3.4.6. It has no actual or potential conflict of interest with NWL, which for the avoidance of doubt potentially includes the Supplier using any former NWL employee in the provision of the Goods and/or Services, (Conflict of Interest) and, if any Conflict of Interest arises during the Term, the Supplier shall;
 - 3.4.6.1. Immediately notify NWL of the Conflict of Interest;
 - 3.4.6.2. Provide NWL with all information reasonably requested by NWL in relation to the Conflict of Interest; and
 - 3.4.6.3. Take all reasonable steps to manage the impact of such Conflict of Interest, including by implementing measures required by NWL.

4. MANNER OF PROVISION OF THE SUPPLY

- 4.1. The Supplier shall provide adequate personnel cover in connection with the Supply of the Goods and Services under this Contract notwithstanding holidays and sickness;
- 4.2. 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.
- 4.3. Whenever present on the Premises, 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.
- 4.4. 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.
- 4.5. The decision of NWL as to whether any person is to be admitted to or is to be removed from the Premises, 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.
- 4.6. 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 4.6.
- 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 AND/OR FEES

- 5.1. The Price and/or Fees payable for the Supply shall be as stated in the Contract, save only as may be varied under Condition 2.2 or Condition 2.3, 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, unless otherwise agreed.

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
- 6.3. Each invoice must include the Purchase Order and/or works request number and shall be submitted as an individual PDF document regardless of the number of pages.
- 6.4. Unless otherwise stated in the Purchase Order, NWL shall pay the Price and/or the Fees for the Supply within forty five (45) days after receipt by NWL of the Supplier's valid and correct invoice.
- 6.5. NWL may, at its sole discretion, either set off against the Price and/or the Fees (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, up to any cap or caps on the same, in each case as set out in the Contract, or invoice from the Supplier for the same monthly in arrears.
- 6.6. 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.

- 6.7. 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 2.3.
- 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 and/or the Fees which has been paid.

8. RISK AND TITLE

- 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

- 10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation.

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

PART A: INTELLECTUAL PROPERTY

- 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.

PART B: CONFIDENTIALITY

13.5. The parties undertake and agree:

13.5.1. to use the Confidential Information only for performing their respective 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, subcontractors, subconsultants, sub-suppliers 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 parties are under the Contract;

13.5.3. that Confidential Information shall at all times remain the property of the disclosing party. 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 receiving party without the disclosing party'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 the disclosing party's prior consent in Writing;

13.5.5. to ensure that all employees, agents and subcontractors of the receiving party are under an obligation no less onerous than the obligations on the receiving party 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 receiving party 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 6 (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).

17.2.3. 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 takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause;

17.3.3. the Supplier suspends or ceases, or threatens to suspect or cease, carrying on business;

17.3.4. the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Framework Agreement is in jeopardy; or

17.3.5. 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.

17.6. Without prejudice to any other provision of this Contract, NWL shall have the right at any time and for any reason to terminate or suspend the Contract in whole or in part by giving the Supplier not less than 3 (three) months written notice whereupon the provision of Goods and/or Services or works under this Contract shall be discontinued and NWL shall pay to the Supplier fair and reasonable compensation for any work-in-progress at the time of termination but such compensation shall not include Indirect Costs, loss of anticipated profits or any other consequential, special or indirect loss.

18. REMEDIES, LIABILITY AND INSURANCE

18.1. The Supplier shall be liable for and indemnify and keep NWL indemnified against all actions, claims, proceedings, demands, liability, injury, loss, damages, charges, costs and/or expenses (including legal and

other professional expenses) incurred or suffered by NWL in connection with the supply of the Goods and Services under this Contract, that arise or result from the Supplier's breach or non-observance of contract, negligence (or other tortious act or omission), misrepresentation (including fraudulent or dishonest misrepresentation), breach of statutory duty or otherwise.

- 18.2. 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.
- 18.3. 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.
- 18.4. 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.
- 18.5. In accordance with Condition 31 below, 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 in advance and in respect of which no Supply is provided (and this remedy shall be cumulative with NWL's other remedies under the Contract).
- 18.6. Nothing in the Contract shall have the effect of excluding or limiting the liability of either party for:
- 18.6.1. 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;
 - 18.6.2. gross negligence, misrepresentation or fraud or fraudulent misrepresentation; or
 - 18.6.3. liability under any indemnity in the Contract.
- 18.7. Subject to Conditions 13.7, 18.6 and 20, where a claim arises under or in connection with the Contract the total liability of (i) 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 the higher of (a) 200% of the total Contract value or (b) five million pounds (£5,000,000) and (ii) NWL in the total aggregate (whether in contract, tort (including negligence) or otherwise) will not at any time exceed an amount equal to the total amount of the Price and/or Fees paid or payable under this Contract.
- 18.8. Without prejudice to the Supplier's liability under this Contract or under Applicable Law, the Supplier shall take out and maintain in force with a reputable insurance provider the following insurance policies during the period of the performance of the Contract and for a period of 12 months thereafter:
- 18.8.1. Public Liability insurance in the sum of £10,000,000 for each and every occurrence and / or series of occurrences arising out of one source or original cause; and
 - 18.8.2. Employer's Liability insurance in the sum of £10,000,000 for each and every occurrence and / or series of occurrences arising out of one source or original cause; and
 - 18.8.3. Product Liability insurance in the sum of £10,000,000 for each occurrence and or series of occurrences arising out of one source or original cause and in the aggregate; and
 - 18.8.4. Professional Indemnity insurance in the sum of £5,000,000 arising from one incident and/or event or a series of incidents and/or events, where you are providing professional services or advice.

18.9. The Supplier shall, whenever required, produce evidence of the policies to NWL, being copies of certificates and / or a broker's letter.

18.10. 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.

18.11. 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 paragraphs 20.3 b) and 20.3 d) of this Condition;
- 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 services 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, damages, loss, awards, legal and other professional fees and expenses, and any other liabilities;

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- e) 'End Date' means the date on which the Supplier ceases to provide the Supply or part of it under the Contract or, where there is more than one such date, each relevant date as the context requires;
 - 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 paragraph 20.3 h) of this Condition;
 - h) 'Replacement Supplier' means any third party appointed by NWL (including NWL if applicable) to carry out work or services that is substantially similar to the Supply or part of the Supply and which are in substitution for the Supply following the termination or partial termination of the Contract;
 - i) 'Start Date' means the date on which the Supplier becomes responsible to carry out work under the Contract or, where there is more than one such date, each relevant date as the context requires;
 - j) '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 the Supply 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);
 - k) '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 Supply or relevant part of the Supply at the relevant End Date;
 - l) '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 Supply at the date of preparation of the list;
 - m) '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 or Supply (in whole or in part);
 - n) '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;
 - 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 Supply (or any part of it) may change (whether as a result of termination of the Contract, or part, or otherwise) resulting in a transfer of the Supply in whole or in part to a Replacement Supplier ('**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 of the Term; 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 paragraph 20.3 b) above at 3 (three) monthly intervals or more frequently if reasonably requested by NWL.
- d) At least 28 (twenty eight) 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) Once the Supplier has provided the Supplier's Final Staff List the Supplier is under an ongoing obligation to notify NWL of any changes to the Employee Information in respect of those on the Supplier's Final Staff List up to and including the End Date.

- f) The Supplier warrants to NWL and/or any Replacement Supplier that to the best of its knowledge and belief all Employee Information provided to NWL and/or any Replacement Supplier shall be complete and accurate in all respects.
- g) The Supplier must notify NWL immediately if any Supplier Personnel on the Supplier's Final Staff List give notice to terminate their employment.
- h) 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 Supply (or similar work or services) and to any Replacement Supplier, subject to compliance with the Data Protection Laws.
- i) 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 paragraphs 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.
- j) At least 14 (fourteen) days before the relevant End Date, the Supplier shall 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 pay for tax and pension purposes;
 - iii. cumulative tax paid;
 - iv. 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.
- k) 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 Supply or 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 Supplier Personnel (including the 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 Supplier Personnel (including the Transferring Employees) at any time between the Transfer Time and the relevant End Date;
 - iii. any emoluments and outgoings due to the Supplier Personnel (including 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 their contract of employment or any liability regarding their 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 the later of the End Date and the date of becoming aware of the alleged transfer, 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 paragraph 20.4 c) i above;
 - iii. after the period referred to in paragraph 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 paragraph 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, SUBCONTRACTING AND OTHER DEALINGS

- 22.1. In the event of any conflict between the provisions of the standard terms and conditions of purchase set out in these Conditions 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, at any time, assign, transfer, novate, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. NWL may also, at any time, 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, transfer, novate, mortgage, charge, delegate, declare a trust over, subcontract or deal in any other manner with any of its rights and obligations under 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 Condition 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 in the Contract (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 sub-contractors 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 the 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 the 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.

31. FORCE MAJEURE

- 31.1. Provided it has complied with Condition 31.3 below, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (the "Affected Party"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 31.2. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 31.3. The Affected Party shall: (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in Writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; (b) take reasonable precautions to prevent or minimise the Force Majeure Event including implementing and complying with an effective business continuity plan, except where compliance with the business continuity plan is itself affected by the Force Majeure Event; and (c) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations under the Contract.
- 31.4. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations under the Contract for a continuous period of more than 30 (thirty) days, the party not affected by the Force Majeure Event may terminate the Contract by giving not less than 10 (ten) days' written notice to the Affected Party.

32. SUSTAINABILITY

- 32.1. The Supplier shall focus on embedding sustainability in its supply chain to drive the most positive environmental, social and economic impacts possible over the Term.
- 32.2. Where an alternative product, operating procedure or other development would satisfy the contract requirement (i.e. lower GHG emissions, waste reduction, etc.) the Supplier shall inform NWL as soon as the Supplier becomes aware.
- 32.3. The Supplier shall work collaboratively with NWL on reducing the carbon footprint and/or the waste associated to the Goods and/or Services supplied by the Supplier under the Contract and map its supply chain to understand the environmental impact of the Goods and/or Services supplied by the Supplier to NWL.
- 32.4. The Supplier shall advise NWL of any changes, innovations, or opportunities which would assist in the delivery of the Contract to NWL in a more sustainable manner.
- 32.5. Carbon
- 32.5.1. The Supplier shall support NWL's commitment to achieve net zero operational emissions.
- 32.5.2. The Supplier shall advise and work with NWL to improve NWL's energy efficiency associated with their supply of Goods and/or Services .
- 32.5.3. The Supplier shall promote minimising energy use to its employees.
- 32.5.4. The Supplier shall assist in CO2 reduction through its supply chain by:

- 32.5.4.1. embedding leading edge energy efficiency into the design of any new and existing infrastructure and assets used in the manufacture of Goods and performance of Services under the Contract;
- 32.5.4.2. proactively ensuring that its extended supply chain is moving to an energy efficient model;
- 32.5.4.3. providing details on its current GHG emissions monitoring and verification procedures;
- 32.5.4.4. providing its most recent GHG report;
- 32.5.4.5. providing information detailing the energy use and GHG emissions generated by the Supplier in the delivery of this Contract. This should be provided in the form of a pre-delivery estimate and a post delivery inventory detailing any variance from the initial estimate.

32.6. Noise

- 32.6.1. The Supplier when supplying the Services shall minimise the potential impact of noise generated by its activities on other businesses and local residents.

32.7. Water Management/Efficiency

- 32.7.1. The Supplier shall advise and work with NWL to reduce its water consumption and shall maximise the use of non-potable water instead of potable water.

32.8. Waste

- 32.8.1. The Supplier shall support NWL's commitment to achieve zero avoidable waste.
- 32.8.2. The Supplier shall ensure compliance with the UK waste hierarchy and continued progression to achieving best practice in terms of prevention, reduction, re-use and recycling of waste.
- 32.8.3. The Supplier shall promote the importance of minimising waste to its employees.
- 32.8.4. The Supplier shall aim to avoid virgin material use wherever possible, without detriment to quality, and consider the use of recycled material. Where waste is generated, the Supplier shall maximise the proportion that can be recycled.
- 32.8.5. The Supplier and its subcontractors shall ensure that all waste produced in the Supply of the Goods and/or Services is taken to the appropriate designated compactor, waste-away area or bin location and disposed of in accordance with applicable law.
- 32.8.6. The Supplier shall provide method statements describing the process of segregation, storage and separate disposal of each waste category. The Supplier shall be report annual performance against these waste targets to NWL.

- 32.9. The Supplier shall be required to provide evidence of product compliance for maintenance activities with all applicable law including but not limited to Restriction of Hazardous Substances (RoHS) and Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

33. Security of network and information systems

- 33.1. The Supplier warrants that the following information in this clause on the security of its network and information systems is up to date and accurate and that it will update NWL immediately in the event of any changes to such information:

33.1.1. Security of systems and facilities

- 33.1.1.1. A description or mapping of the Supplier's information system insofar as it relates to NWL and any policies the Supplier has in place for managing information security, including risk analysis, human resources, security of operations, security architecture, secure data and system life cycle management and, where applicable, encryption and its management.
- 33.1.1.2. Its measures to protect the security of its network and information systems from damage using an all-hazards risk-based approach, addressing for instance system failure, human error, malicious action or natural phenomena.
- 33.1.1.3. Its measures including any policies to ensure the accessibility and traceability of critical supplies used in the provision of the Services.
- 33.1.1.4. Any measures to ensure that the physical and logical access to network and information systems, including administrative security of network and information systems, is authorised and restricted based on business and security requirements.

33.2. Incident handling

- 33.2.1. Its detection processes and procedures for ensuring timely and adequate awareness of anomalous events and details of the ways in which it maintains and tests these processes and procedures.
- 33.2.2. Its processes and policies on reporting Incidents and identifying weaknesses and vulnerabilities in its information systems.
- 33.2.3. Its procedures for assessing the severity of a security Incident, documenting knowledge from incident analysis which may serve as evidence and support a continuous improvement process.

33.3. Business continuity management

- 33.3.1. Its contingency procedures for ensuring business continuity for the Services and details of the ways in which it regularly assesses and tests these.
- 33.3.2. Its disaster recovery capabilities and details of the ways in which these are regularly assessed and tested.

33.4. Monitoring, auditing and testing

- 33.4.1. Its policies and the maintenance of such policies on:
 - 33.4.1.1. conducting planned sequences of observations or measurements to assess whether network and information systems are operating as intended;
 - 33.4.1.2. inspection and verification to check whether a standard or set of guidelines is being followed, records are accurate, and efficiency and effectiveness targets are being met;
 - 33.4.1.3. a process (including technical processes and personnel involved in the operation flow) intended to reveal flaws in the security mechanisms of a network and information system that protect data and maintain functionality as intended

33.5. The Supplier shall notify NWL immediately it becomes aware of any Incident and respond without delay to all queries and requests for information from NWL about any Incident, whether discovered by the Supplier or NWL, in particular bearing in mind the extent of any reporting obligations NWL may have under the Security Requirements and that NWL may be required to comply with statutory or other regulatory timescales.

33.6. The Supplier agrees to co-operate with NWL in relation to:

- 33.6.1. all aspects of its compliance with the Security Requirements (if applicable);
- 33.6.2. any requests for information, or inspection, made by any regulator (including in connection with the Security Requirements); or
- 33.6.3. any Incident.

33.7. The Supplier shall (and warrants and represents that it shall) at all times:

- 33.7.1. implement, operate, maintain, and adhere to, an incident management process which shall enable the Supplier, as a minimum, to discover and assess Incidents, and to prioritise those Incidents; and
- 33.7.2. mitigate against all Incidents.

33.8. The Supplier shall:

- 33.8.1. take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data;
- 33.8.2. make a backup copy of such data and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data; and
- 33.8.3. in such event and if attributable to any default by the Supplier, promptly restore the data at its own expense or, at NWL's option, promptly reimburse NWL for any reasonable expenses it incurs in having the data restored by a third party.