

Purchase Order Terms and Conditions (Rev 4th October 2019)

These Conditions may only be varied only by the written agreement of the Commission.

No terms or conditions put forward at any time by the Supplier/Contractor shall form any part of the Contract unless specifically agreed in writing by the Commission

1. INTERPRETATION

"Agreement"

The contract for the sale and purchase of the Goods/Software and/or the supply and acquisition of the Services incorporating these terms and conditions and the Purchase Order.

"Agreement Personal Data" - Personal Data which is to be Processed under this Agreement, as more particularly described in the Purchase Order.

"Anti-Bribery Laws"

Any and all statutes, statutory instruments, bye-laws, orders, directives, decrees and laws which relate to anti-bribery and/or anti-corruption, including without limitation the Bribery Act.

"Anti-Slavery Laws"

Any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act.

"Authority"

Any government, agency, regulator or prosecutor.

"Background Materials"

Material, data or other information created or prepared by the Supplier (or its authorised sub-suppliers or licensors) either prior to or independently of this Agreement.

"Bribery Act"

The Bribery Act 2010.

"Commission"

The Forestry Commissioners, acting in exercise of the powers contained in the Forestry Act 1967 and having a principal place of business at 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ.

"Confidential Information"

All information of a confidential or proprietary nature (including information imparted orally) relating to the business or affairs of either party, including, without limitation, the terms of this Agreement and any associated pricing.

"Data Protection Laws"

All applicable laws relating to data protection, the processing of personal data and privacy; and references to 'Data Subjects', 'Personal Data', 'Process', 'Processed', 'Processing', 'Processor' and 'Supervisory Authority' have the meanings set out in, and will be interpreted in accordance with, such applicable laws.

"Employment Costs"

All salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs (such as the provision of non pecuniary benefits).

"Force Majeure"

In relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, civil disturbance, acts of any governmental or supra-national authority, currency restrictions and restraints or delays affecting carriers).

"Goods"

The goods (if any, including any instalment of the goods or any parts for them) specified in the Purchase Order.

"Input Material"

Any material, data or other information provided to the Supplier by the Commission relating to the Goods/Software and/or the Services.

"Modern Slavery Act"

The Modern Slavery Act 2015.

"Modern Slavery Practice"

Any practice, act or omission that amounts to modern slavery as defined in the Modern Slavery Act.

"New Provider"

Any replacement supplier nominated by the Commission to provide similar services to the Services following the expiry or termination of the Agreement.

"Purchase Order"

The Commission's purchase order for the Goods/Software and/or Services to which these terms is annexed or any written or electronic order placed by the Commission.

"Output Material"

Any material, data or other information provided created or developed by the Supplier or its agents, contractors or employees relating to the Goods/Software and/or the Services in any form or media, but excluding Background Materials.

"Policy"

The Commission's anti-corruption policy, as incorporated into the Commission's Code of Business Ethics Policy, as amended from time to time.

"Price"

The charge for the Goods/Software and/or Services and any other costs or expenses properly incurred by the Supplier on the Commission's behalf.

"Recoverable Liabilities"

Any actions, costs, claims, charges, liabilities, demands, fines, penalties, damages, compensation, losses, awards or expenses (including legal expenses) or any other liabilities.

"Regulations"

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, modified, replaced or re-enacted from time to time).

"Services"

The services described in the Purchase Order.

"Software"

Means the software to be provided by the Supplier as part of the Services and which will be licensed to the Commission. Together any Standard Software and any Third Party Software, and each shall be an item of Software.

"Standard Software"

The standard software packages owned by the Supplier provided by the Supplier pursuant to an Purchase Order.

"Supplier"

The individual, partnership, LLP or company to whom an Purchase Order is placed.

"Tax Evasion Offences"

Includes:

(i) any offence of cheating the UK or a foreign public revenue;

(ii) any offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to the fraudulent evasion of tax or in the facilitation of the evasion of tax; and

(iii) any other equivalent offences under the laws of other jurisdictions.

"Third Party Software"

The software packages owned by third parties provided by the Supplier pursuant to an Purchase Order.

"VAT"

Value added tax chargeable under the Value Added Tax Act 1994, as amended from time to time and regulations made thereunder, and any similar additional tax.

2. BASIS OF PURCHASE

2.1 The Purchase Order constitutes an offer by the Commission to purchase the Goods/Software and/or acquire the Services subject to the terms of this Agreement. The Purchase Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing a written acknowledgement or acceptance of the Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order. This Agreement shall apply unless the Commission has specified otherwise in a Purchase Order by including a contract reference number, in which case the terms of the referenced contract shall apply in place of this Agreement. This Agreement shall apply to the exclusion of any other Supplier terms and conditions on which any quotation has been given to the Commission or subject to which the order is accepted or purported to be accepted by the Supplier (including without limitation, any terms contained within invoices or timesheets submitted to the Commission). All Purchase Orders will be binding on the Supplier. No variations to the Purchase Order or this Agreement shall be binding unless agreed in writing between the Commission and Supplier. The Supplier is not authorised to perform the Services and/or provide the Goods/Software unless an Purchase Order has been given by the Commission to the Supplier. Purchase Orders for the Goods/Software and/or Services shall be given by the Commission to the Supplier in writing or electronically. The Software shall be supplied to the Commission as part of this Agreement and shall be licensed to the Commission accordingly.

3. PRICE OF THE GOODS/SOFTWARE AND/OR SERVICES

3.1 The Price of the Goods/Software and/or Services shall be as stated in the Purchase Order and, unless otherwise so stated, shall be exclusive of any applicable VAT (which shall be payable by the Commission subject to receipt of a VAT compliant invoice). The Price shall be quoted in pounds sterling in the Purchase Order and the invoice shall also be submitted in pounds sterling (unless otherwise agreed in writing by the Commission). No increase in the Price may be made without the prior written consent of the Commission. The Commission shall be entitled to any discount for prompt payment bulk purchase or volume of purchase customarily granted by the Supplier. The Supplier shall not charge the Commission for any expenses, unless otherwise agreed in advance by the Commission in writing.

4. TERMS OF PAYMENT

4.1 The Supplier shall be entitled to invoice the Commission on delivery of the Goods/Software and/or monthly in arrears for Services completed to the satisfaction of the Commission. The Supplier shall ensure that the invoice contains the relevant Purchase Order number or contract reference number. In addition, the Supplier shall display the Supplier's full name and registration details on each invoice and shall include full details of the rates and quantities of the Goods/Software delivered and/or Services properly performed by the Supplier (including any timesheets) pursuant to the Purchase Order and any other information requested by the Commission from time to time. Where Goods are being supplied, in addition to the requirements already noted in this paragraph, the Supplier shall provide details of the relevant import documents (including, without limitation, the original shipping invoice on the Supplier's letter-head with signature and the Supplier's company stamp (and the Supplier acknowledges that the Commission will not process any invoices for payment unless the invoice letter-head name is consistent with that stated on the Purchase Order); the original packing list; the original commercial invoice and Certificate of Origin attested by the local Chamber of Commerce).

4.2 Unless otherwise stated in the Purchase Order, the Commission shall pay the Price of the Goods/Software and/or Services in cleared funds within 30 days of receipt by the Commission of the invoice or, if later, after acceptance of the Goods/Software and/or Services in question by the Commission provided that there is no dispute in relation to the invoice. In order to facilitate payment, the Supplier's invoice shall provide details of its bank account details along with wire transfer instructions. Where the Commission notifies the Supplier of any errors in the invoice, the 30 day payment period shall be suspended and the Supplier shall re-issue the same so that it is accurate and the 30 days payment period shall re-commence upon the date that the new invoice is received by the Commission. Where an invoice is disputed and the Supplier wishes the Commission to make a partial payment of the invoice, the Supplier shall submit to the Commission a full credit note for the disputed invoice, and shall re-issue a new invoice setting out only that part of the original invoice that the Commission is not disputing and the payment provisions above shall then apply to such re-issued invoice. The Commission shall be entitled to set off against the Price any sums owed to the Commission by the Supplier.

4.3 If either party fails to pay on the due date any undisputed amount which is payable to the other under this Agreement then, without prejudice to paragraph 14, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at 3 per cent per annum over the Natwest base rate from time to time. The parties agree that this paragraph 4 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

5. INSPECTION AND TESTING

5.1 The Supplier shall comply with all applicable regulations and other legal requirements concerning the manufacture, labelling, packaging, storage, handling and delivery of the Goods. The Goods shall be marked in accordance with the Commission's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

6. DELIVERY

6.1 The Goods/Software shall be delivered to, and/or the Services shall be performed, at the address set out in the relevant Purchase Order, on the date or within the period stated in the Purchase Order or as otherwise agreed by the Commission in writing, during the Commission's usual business hours. The risk of damage to or loss of the Goods/Software shall pass to the Commission upon delivery to the Commission in accordance with this Agreement. The property in the Goods/Software shall pass to the Commission upon delivery. The time of delivery of the Goods/Software and/or the performance of the Services is of the essence of this Agreement. The Supplier shall supply to the Commission in good time any instructions or other information required to enable the Commission to accept performance of the Services or delivery of the Goods/Software. The Supplier shall identify any special handling requirements (including, but not limited to, hazardous materials) on the packaging. The Supplier shall notify the Commission a minimum of 12 months prior to the Goods going obsolete or the Supplier ceasing to actively supply the Goods. Spares, where applicable, shall be made available for a period of 24 months from the date where the Goods become obsolete or where the Supplier ceases to actively supply the Goods, as the case may be.

7. WARRANTIES AND LIABILITY

7.1 The Supplier warrants to the Commission that the Services will be performed by appropriately qualified and trained personnel, with the greatest possible care, skill and diligence and to such high standard of quality as would be expected from an expert provider of similar services. The Supplier warrants that any deliverables provided pursuant to this Agreement shall be free from defects in workmanship or materials, and shall at all times comply with any specification and shall be fit for purpose. The Supplier warrants to the Commission that it shall comply with all applicable regulations or other legal requirements concerning the performance of the Services.

7.2 The Supplier warrants to the Commission that the Goods/Software (if any) for a period of 12 months following the Commissions first making use of such Goods/Software, will (a) be of satisfactory quality as defined in the Sale of Goods Act 1979 (as amended from time to time) and fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication; (b) be free from defects in design, material and workmanship; (c) correspond with their description and any relevant specification or sample; and (d) comply with all statutory requirements and regulations relating to the sale of the Goods. For the avoidance of doubt, this warranty does not in any way affect the Commissions statutory rights. The Commission shall be entitled to reject any quantity of the Goods/Software and/or Services which are not in accordance with any agreed specification.

7.3 Without prejudice to any other remedy, if any Goods/Software and/or Services are not supplied or performed in accordance with this Agreement, then the Commission shall be entitled: (a) to require the Supplier to supply replacement Goods/Software and/or Services in accordance with this Agreement within 7 days; or (b) at the Commission's sole option and whether or not the Commission has previously required the Supplier to supply any replacement Goods/Software and/or Services, to treat this Agreement as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid. The Supplier shall indemnify the Commission (and members of its group) in full against all liability, loss, damages, costs and expenses (including legal expenses) incurred by the Commission (or any member of its group) as a result of or in connection with: (a) breach of any warranty given by the Supplier; (b) any claim that the Goods/Software and/or the performance of the Services infringes the intellectual property rights of any person; (c) any act or omission of the Supplier or its employees, agents or sub-contractors in the supply of the Goods/Software and/or the performing the Services (which shall, for the avoidance of doubt, include any act, omission, negligence or wilful misconduct); (d) breach of paragraph 10; (e) any breach of this Agreement. The Supplier shall use all reasonable endeavours to manufacture and maintain sufficient stocks of the Goods under this Agreement. Where the Supplier is not the manufacturer of the Goods, the Supplier shall ensure that the Commission has the benefit of all manufacturers warranties and guarantees in respect of the Goods that are made available to the Supplier.

8. STAFF AND TUPE

8.1 The parties confirm their intention that the employees of the Supplier shall at all times remain employed by the Supplier which shall provide the Services only as an independent contractor. The parties confirm their intention that at no time shall the performance of the Services by such employees be treated as independent of or separate from the normal performance of the Suppliers business.

8.2 The parties understand that on commencement of this Agreement the Regulations may apply. Subject to the parties agreeing otherwise, the Supplier and the Commission confirm that it is not intended that any employees of the Commission shall transfer to the Supplier on commencement of this Agreement.

8.3 If any employee of the Commission (the 'Commission Relevant Person') claims that, as a result of the Commission and Supplier entering into this Agreement, his contract of employment has transferred to the Supplier pursuant to the Regulations, the following will apply:

8.3.1. the Supplier will notify the Commission in writing within seven (7) days of becoming aware of such claim;

8.3.2. the Commission will use reasonable commercial endeavours, within ten (10) business days of being so notified, to find suitable alternative employment for, and make an offer of employment to the Commission Relevant Person;

8.3.3. Unless the offer is accepted within fifteen (15) business days of the notification referred to under paragraph 8.3.1 above, the Supplier may terminate (or purport to terminate) the contract of employment of the Commission Relevant Person;

8.3.4. the Commission shall indemnify the Supplier in respect of all Recoverable Liabilities sustained by the Supplier in relation to such person arising directly or indirectly out of or in connection with such termination and/or failure of information and consultation and against any sums payable to or in relation to any Commission Relevant Person in connection with his or her employment up to the date of termination.

8.4 The parties confirm their intention that the employees of the Supplier shall at all times remain employed by the Supplier which shall provide the Services only as an independent contractor. The parties confirm their intention that at no time shall the performance of the Services by such employees be treated as independent of or separate from the normal performance of the Supplier's business. For the avoidance of doubt, the Supplier remains liable at all time for any Employment Costs in respect of its personnel.

8.5 If on termination of this Agreement: (a) a contract is awarded for the provision of the Services to a New Provider; or (b) the Commission brings the provision of the Services in house, the Regulations may apply. Notwithstanding the provisions of the Regulations, the Supplier and the Commission confirm that it is not intended that any employees of the Supplier shall transfer to the Commission or any New Provider on or following the termination of this Agreement. If any employee of the Supplier (the "Supplier Relevant Person") claims that, as a result of the Commission and Supplier entering into this Agreement or its termination, his contract of employment has transferred to the Commission or a New Provider pursuant to the Regulations, the following will apply:

8.5.1. the Commission will notify the Supplier in writing within seven (7) days of becoming aware of such claim;

8.5.2. the Supplier will use reasonable commercial endeavours, within ten (10) business days of being so notified, to find suitable alternative employment for, and make an offer of employment to the Supplier Relevant Person;

8.5.3. Unless the offer is accepted and Supplier provides evidence to Commission and New Provider that the offer has been accepted within fifteen (15) business days of the notification referred to under paragraph 8.5.1 above, the Commission or New Provider may terminate (or purport to terminate) the contract of employment of the Supplier Relevant Person;

8.5.4. the Supplier shall indemnify the Commission and/ or New Provider in respect of any Recoverable Liabilities arising from or related to:

a) such termination (or purported termination) of employment;

b) the costs of employing the Supplier Relevant Person from the date of transfer or alleged transfer to the date on which his or her employment terminates;

c) any claim by the Supplier Relevant Person in respect of any fact or matter to the extent that such claim concerns or arises from employment with Supplier or the termination of that employment;

d) any claim by the Supplier Relevant Person in respect of which the Commission or the New Provider incurs liability as a result of the operation of the Regulations;

e) any claim relating to the failure by any person to comply with information and consultation obligations under the Regulations.

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8.6 For the avoidance of doubt, the Supplier shall in any event indemnify the Commission and any New Provider from any and all Recoverable Liabilities the Commission and or any new Provider may incur as a result of any act or omission of the Supplier or its personnel, whether or not the parties are jointly and severally liable for any obligation under the Regulations.

8.7 The Supplier is responsible for making appropriate PAYE and other deductions from the remuneration it pays to its employees and will account for the same to the appropriate authorities. The Supplier agrees to indemnify the Commission on a continuing basis against any income tax (whether under PAYE or otherwise) or national insurance contributions relating to the Services as performed by the Supplier and its employees (including any related interest, penalties or costs) which may at any time be levied, demanded or assessed on the Commission by the Inland Revenue or other statutory authority for which the Commission may otherwise be or become liable in relation to the Supplier and/or its employees and any loss suffered as a result of any sums paid to the Supplier in respect of VAT not being recoverable as allowable input tax for VAT purposes.

9. BUSINESS CONTINUITY AND INSURANCE

9.1 The Supplier warrants that it maintains adequate contingency or disaster recovery procedures so that it can continue to provide the Services and/or Goods/Software with the minimum of delay in the event of disruption including without limitation any circumstance referred to in paragraph 14. The Supplier shall maintain adequate insurance to satisfy its liabilities under this Agreement and shall, upon request, provide the Commission with evidence that such policies are being maintained.

10. SITE RULES, POLICIES AND COMPLIANCE WITH LAW AND REGULATION

10.1 The Supplier shall ensure that such of its personnel who are engaged in the provision of the Goods/Software and/or Services comply with such rules, regulations, policies, procedures and other requirements (including without limitation those relating to health, safety, environmental and security arrangements) as notified to it from time to time for the conduct of personnel, including without limitation when at the Commission's site. The Supplier shall at all times comply with all laws and applicable regulations in performing its obligations under this Agreement.

10.2 Anti-Bribery. The Supplier shall, and shall procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement shall: (a) comply with all applicable Anti-Bribery Laws; (b) not do or omit to do any act or thing which causes or may cause it or the Commission to be in breach of and/or to commit an offence under applicable Anti-Bribery Laws; (c) comply with the Policy as updated periodically; (d) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it takes to comply with this paragraph 10.2 and permit the Commission to inspect those records as reasonably required; (e) promptly notify the Commission of any request or demand for any improper financial or other advantage received by it; or any improper financial or other advantage it gives or intends to give whether directly or indirectly in connection with this Agreement; and (f) promptly give the Commission written notice of any breach of this paragraph 10.2.

10.3 Fraud Prevention. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud in connection with the receipt of monies from the Commission. The Supplier shall notify the Commission immediately if it has reason to suspect that any fraud has occurred, is occurring or is likely to occur. If the Supplier or the any of the Supplier's employees commits fraud in relation to this or any other contract with a public body (including the Commission) the Commission may terminate the Contract.

10.4 The Commission may terminate this Agreement immediately by giving written notice to the Supplier if the Supplier is in breach of any of its obligations under paragraph 10.2 or 10.3. If the Commission terminates this Agreement, by giving written notice to the Supplier following breach by the Supplier of its obligations under paragraph 10.2 or 10.3, the Supplier shall not be entitled to claim compensation or any further remuneration from the Commission, regardless of any activities carried out or agreements with third parties entered into before termination. The Commission shall be entitled, by giving written notice to the Supplier, to require the Supplier to remove from the performance of this Agreement any of the Supplier's officers, employees, agents or sub-contractors in respect of whom the Supplier is in breach of any of its obligations under paragraph 10.2 or 10.3. The Supplier will include in any sub-contract which it enters into in connection with this Agreement a clause equivalent to paragraph 10.2 and 10.3; and a right under the Contracts (Rights of Third Parties) Act 1999 for the Commission to exercise equivalent rights over the sub-contractor to those which it exercises over the Supplier in this paragraph 10.4.

10.5 The Supplier shall indemnify, keep indemnified and hold harmless the Commission in full and on demand from and against all liabilities (including without limitation any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs, judgements and costs (including without limitation costs of enforcement) and expenses which the Commission incurs or suffers directly or indirectly in any way whatsoever as a result of: (a) any breach by the Supplier of any of its obligations under paragraph 10.2 or 10.3; (b) any breach by any sub-contractor of the Supplier of any equivalent provisions contained in the relevant sub-contract (including, without limitation, to any failure or delay in performing, or negligent performance or non-performance of, any obligations); and (c) any proceedings under section 7 of the Bribery Act being brought against the Commission as a result of the conduct of the Supplier or any of its officers, employees, agents or sub-contractors, where such proceedings do not result in a conviction against the Commission, including the costs of procuring the Services from a person other than the Supplier (including the costs of interim service provision, the costs of any re-tender and the amount by which any new service provider's charges exceed the charges payable to the Supplier under this Agreement).

10.6 Modern Slavery. The Supplier will not and will procure that any other person who performs services for or on behalf of it in connection with this Agreement will not engage in any Modern Slavery Practice. The Supplier will conduct proper due diligence on its own suppliers and all persons employed or engaged on or in connection with this Agreement to ensure that they do not engage in any Modern Slavery practice. The Supplier will immediately give written notice to the Commission upon the occurrence of a breach or suspected breach of any of its obligations referred to in this paragraph 10.6. The notice will set out full details of the breach or suspected breach. The Commission may terminate this Agreement immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of any of its obligations under this paragraph 10.6.

10.7 Safeguarding Vulnerable Groups. In the event that the Supplier is engaged in any Regulated Activity under the terms of this Agreement the Supplier will have ultimate responsibility for the management and control of the Regulated Activity provided and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

10.8 The Supplier shall ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); monitor the level and validity of the checks under this paragraph 10.8 for each member of staff; and not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to any individuals under the terms of this Agreement.

10.9 The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

10.10 The Supplier shall immediately notify the Commission of any information that it reasonably requests to enable it to be satisfied that the obligations of paragraph 10.7 to paragraph 10.11 have been met.

10.11 The Supplier shall refer information about any person carrying out the services to the DBS where it removes permission for such person to carry out any of the Services (or would have if such person had not otherwise ceased to carry out the services) because in its opinion, such person has harmed or poses a risk of harm to users of the service, children or adults considered to be vulnerable.

11. FREEDOM OF INFORMATION

11.1 The Supplier acknowledges that the Commission is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall provide all necessary assistance and cooperation as reasonably requested by the Commission to enable the Commission to comply with its obligations under the FOIA and the EIR; transfer to the Commission all requests for information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt; provide the Commission with a copy of all information belonging to the Commission requested in the request for information which is in its possession or control in the form that the Commission requires within 5 Business Days (or such other period as the Commission may reasonably specify) of the Commission's request for such information; and not respond directly to a request for information unless authorised in writing to do so by the Commission.

11.2 The Supplier acknowledges that the Commission may be required under the FOIA and the EIR to disclose information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Commission shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

11.3 Notwithstanding any other provision in this Agreement, the Commission shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIR.

12. INPUT MATERIAL, OUTPUT MATERIAL AND CONFIDENTIALITY.

12.1 The property and any copyright design rights or other intellectual property rights in: (a) any Input Material shall (subject to any such rights of any third party) belong (or continue to belong) to the Commission; (b) any Background Materials shall (subject to any such rights of any third party) belong (or continue to belong) to the Supplier; and (c) any Output Material shall belong to the Commission and the Supplier shall assign with full title guarantee to the Commission any such property or other rights which it may have for no further consideration upon the completion of the performance of the Services. The Supplier hereby grants to the Commission a non-exclusive, perpetual, irrevocable, royalty-free licence to use the Background Materials in order to obtain the full benefit of the Goods/Software and/or Services. At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

12.2 Any Input Material or other information provided by the Commission or concerning the Commission's affairs (including, without limitation, any Confidential Information of the Commission) shall be kept confidential by the Supplier and its employees and agents, and all Output Material or other information provided by the Supplier which is so designated by the Supplier shall be kept confidential by the Commission; but the foregoing shall not apply to any documents or other materials, data or other information which enter the public domain (other than by breach of this paragraph 12.2) or where any disclosure is required by law or regulatory authority. Neither party shall use the other's name, trademarks, service marks or logos for any promotional or publicity purposes without the express written consent of the other.

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13. TERMINATION

13.1 The Commission shall be entitled to cancel the Purchase Order in respect of all or part only of the Goods/Software and/or Services by giving notice to the Supplier at any time prior to the delivery and/or performance with no liability to the Commission. The Commission shall be entitled to terminate this Agreement without liability to the Supplier by giving notice to the Supplier at any time if the Supplier: makes any voluntary arrangement with its Creditors (within the meaning of the Insolvency Act 1986); or (being a company) becomes subject to an administration order; or goes into liquidation; or a petition is presented for its winding up; or an encumbrance takes possession of, or a receiver is appointed over, any property or assets of the Supplier; or the Supplier ceases, or threatens to cease, to carry on business; or the Commission reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly. Either party may terminate this Agreement with immediate effect by giving to the other written notice if the other commits any material breach of this Agreement and fails to remedy the same within 14 days of service of notice by the non-defaulting party specifying the breach and requiring it to be remedied.

14. FORCE MAJEURE

14.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstance in question. Subject to paragraph 9, but otherwise notwithstanding any other provision of this Agreement, neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly. If either party claims Force Majeure and is accordingly relieved under this paragraph from performing any of its obligations under this Agreement for a continuous period in excess of 1 month, then the other party may, notwithstanding any other provision of this Agreement, terminate this Agreement by giving to the party which has claimed Force Majeure not less than 7 days' written notice.

15. RECORDS, DATA PROTECTION AND AUDIT

15.1 From the date of acceptance of the Purchase Order the Supplier shall maintain and preserve any and all documentation pertaining to the Purchase Order and the supply of the Goods/ Software and/or Services under the Agreement and shall continue to hold such documentation for a period of five (5) years following termination or expiry of this Agreement. The Supplier shall permit, on reasonable written notice, the Commission (or any appointed representative) to inspect any documentation relating to the Goods/Software and/or Services to monitor and verify the accuracy of the Prices in the Purchase Order and the Suppliers compliance with this Agreement. The Supplier shall promptly provide such information relating to the Purchase Order and the supply of the Goods/ Software and/or Services as the Commission requests and ensure that it is accurate and complete in all material respects.

15.2 The Commission warrants that any Personal Data requested by the Commission, and provided by the Supplier, are for the purposes of delivering the Goods/Software and/or performing the Services under the Agreement. Such Personal Data is received by the Commission on the understanding that the Supplier has complied in all respects with the Data Protection Laws in relation to the collection and disclosure of the Personal Data to the Commission, and sufficient notice has been given, or consents obtained, for the Commission to use the Personal Data as envisaged by this Agreement.

15.3 The Commission authorises the Supplier to Process the Agreement Personal Data during the term of this Agreement as a Processor solely for the purpose and to the extent described in the Purchase Order. In performing its obligations under this Agreement the Supplier will comply with, and will not cause the Commission to breach any obligation under, the Data Protection Laws. The Supplier will not engage a third party to Process Agreement Personal Data without the Commissions prior written consent (which may be given or withheld at the Commissions sole discretion and subject to conditions). If the Supplier, with the Commissions written agreement, appoints a third party to Process Agreement Personal Data, the Supplier will put a written contract in place between the Supplier and that person which specifies their Processing activities and imposes on them the same terms as those imposed on the Supplier in this paragraph 15.3. The Supplier will: Process the Agreement Personal Data only on documented instructions from the Commission (unless required to do so by United Kingdom, European Union or European Union member state applicable law, in which case the Supplier will inform the Commission of that legal requirement before Processing unless that legal requirement prohibits such information on public interest grounds); immediately inform the Commission in writing if, in its opinion, any instruction received from the Commission infringes any Data Protection Laws; not transfer Agreement Personal Data to a country outside the European Economic Area (as it is made up from time to time) without the Commission's prior written consent, which may be given or withheld at the Commissions sole discretion (unless required to do so by United Kingdom, European Union or European Union member state applicable law, in which case the Supplier will inform the Commission of that legal requirement before Processing unless that legal requirement prohibits such information on public interest grounds); ensure that any individual authorised to Process Agreement Personal Data is subject to confidentiality obligations or is under an appropriate statutory obligation of confidentiality and complies with this paragraph 15.3; implement, and assist the Commission to implement, technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Agreement Personal Data; notify the Commission promptly and without undue delay after becoming aware of a Data Security Incident; provide reasonable assistance to the Commission in: responding to requests for exercising Data Subjects rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible; documenting, reporting and taking measures to address and mitigate the effects of any Data Security Incidents; and conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly; at the option of the Commission, securely delete or return to the Commission all Agreement Personal Data promptly after the end of the provision of services relating to Processing and securely delete any remaining copies; and make available to the Commission all information necessary to demonstrate compliance with the obligations set out in this paragraph 15.3 and allow for and contribute to audits, including inspections, conducted by the Commission or another auditor mandated by the Commission.

15.4 Any breach of this paragraph 15 by the Supplier will be a material breach of this Agreement, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any financial loss or deprivation of benefit arising, as a consequence of such breach.

16. NOTICES, INVALIDITY, WAIVER AND INTERPRETATION

16.1 Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing addressed to that other party at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice, and shall be delivered by hand, or sent by pre-paid first class post, electronic mail or transmitted by fax. A notice or other communication shall be deemed to have been received: if delivered by hand, when left at the correct address; if sent by pre-paid first class post 48 hours after posting (excluding Saturdays, Sundays and public holidays); or, if sent by fax, at the time of transmission provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission. No waiver by the Commission of any breach of this Agreement by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision. If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected thereby. Any reference in this Agreement to any provision of any statute shall be construed as a reference to that provision, as amended, re-enacted or extended at the relevant time. Where the words "include" or "including" are used in this Agreement, they are deemed to have the words "without limitation" following them. The headings in this Agreement are for convenience only and shall not affect their interpretation.

17. GENERAL

17.1 In the event that any special conditions are agreed between the parties in writing, then, in the event of any conflict between the terms of this Agreement and any special conditions, the terms of the special conditions shall prevail. The Commission may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Commission. A member of the Commission's group may enforce this Agreement subject to and in accordance with this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999. However, such third party's consent is not required to vary this Agreement. Except as provided in this paragraph, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of this Agreement. The Supplier shall not, for a period of 6 months following termination or expiry of this Agreement, solicit any of the Commissions employees, and shall not employ an employee from the Commission without the prior written consent of the Commission. The Purchase Order is personal to the Supplier and the Supplier shall not assign or transfer or sub-contract to any other person any of its rights or obligations under this Agreement. The formation, construction, performance, validity and all aspects whatsoever of this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales as applied in Wales and the parties hereby agree to submit to the non-exclusive jurisdiction of the English and Welsh Courts.