

The Extracare Charitable Trust (the "Customer")

Terms and Conditions of Purchase

If there is conflict between these conditions and the Buyer's Conditions of Purchase then the latter shall take precedence

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

Authorised: means signed by an Authorised Officer.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 4.3.

Conditions: means these terms and conditions

Contract: means the Purchase Order and the Supplier's acceptance of the Purchase Order, incorporating these Conditions together with any applicable Order Amendments.

Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

Controller: takes the meaning given in the GDPR

Customer means ExtraCare as the "Purchaser"

Customer Materials: has the meaning set out in clause 8.3.10.

Data Protection Legislation: 1.The GDPR, the LED and any applicable national implementing Laws as amended from time to time; 2.The DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; 3.All applicable Law about the processing or personal data and privacy

Deliverables: all documents, products and materials developed by the Supplier or its agents, Suppliers and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods, works and materials (or any part of them) set out in the Purchase Order.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

Insolvency Event: means any one or more of (1) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed (2) a petition for winding up or an administration or bankruptcy order being presented, or such an order being made; (3) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness (4) suspension of payments to all or any creditors; (5) an encumbrancer taking possession of all or any assets of the Customer; (6) an administrator or receiver being appointed over the Customer or all or any of its assets; (7) any action anywhere similar or analogous to any of the foregoing; (8) the Customer ceases, or threatens to cease to carry on business; (9) the Customer has reasonable grounds for believing that any of the foregoing is imminent. For the avoidance of doubt if any of the foregoing occurs in relation to a partner in the Customer hereto it shall be deemed to occur in relation to the Customer.

Intellectual Property Rights: means all patents, trade marks, registered designs, design rights, copyrights, database rights, know how, Confidential Information and other intellectual property rights whatsoever and wherever subsisting.

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Order Amendment: means a written notification to the Supplier by the Customer to amend, add to, detract from or modify the Purchase Order, each Order Amendment having precedence over any earlier Order Amendment;

Packaging: means any type of packaging used by the Supplier to package the Goods or materials used in the Services;

Party: means the Customer or the Supplier as appropriate and Parties means both the Customer and the Supplier

Personal Data: takes the meaning given in the GDPR

Personal Data Breach: takes the meaning given in the GDPR

Price: means the price, exclusive of value added tax ("VAT"), payable by the customer to the Supplier under the Contract for the full and proper performance by the Supplier of the Contract.

Process: has the meaning given to it under the Data Protection Terms & Conditions for the Supply of Goods Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly

Processor: takes the meaning given in the GDPR

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it.

Purchase Order: means the customer's Authorised written request (including any requests issued electronically) to purchase the Goods and/or Services from the Supplier, which shall be deemed to incorporate these Conditions;

Services: means the services to be supplied by the Supplier to the customer under the Contract, as described in the Purchase Order or as otherwise agreed between the parties in writing from time to time, including without limitation any Deliverables described in the Purchase Order.

Specification: includes any plans, drawings, data or other information relating to the Goods or Services.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

Supplier: means the company, partnership, business or individual who/which accepts the customer's Purchase Order and supplies the Goods and/or Services.

Terms and conditions: means these terms and conditions for the purchase of goods together with any other documents (if any) which the customer and the Supplier have expressly agreed shall form a contract between them in connection with the supply of the Goods by the Supplier, and shall include, for the avoidance of doubt, the Contract Front Sheet (if any)

VAT: means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax

2. Condition headings are for ease of reference only and shall not affect the construction or interpretation of any condition.

3. Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

4. **BASIS OF CONTRACT**

4.1 Unless otherwise Authorised in writing by the customer, these Conditions are the only conditions upon which the Customer is prepared to purchase Goods and/or Services from the Supplier.

4.2 These Conditions together with the Purchase Order and any applicable Order Amendments shall constitute the whole agreement between the customer and the Supplier and shall govern the Contract to the entire exclusion of all other terms and conditions (including the Supplier's terms and conditions or those implied by trade, custom or practice).

4.3 The Purchase Order shall be deemed to be accepted by the Supplier issuing written acceptance of the Purchase Order or any act by the Supplier consistent with fulfilling the Purchase Order or (if earlier) the Supplier delivers the Goods to the Customer or performs the Services, at which point and on which date the Contract shall come into existence (**Commencement Date**).

4.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

4.5 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

4.6 The Supplier agrees to sell and the Customer agree to purchase the goods and services subject to the provision of the Purchase Order (including any documents or part documents referred to therein), and of these Conditions and any Purchase Order Amendments and Supplier Acceptance either by word or conduct. The Supplier shall be deemed to have accepted the Purchase Order on the terms described above by delivering the Goods.

4.7 The Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter.

4.8 In the event that a court of competent jurisdiction holds that this Contract should include any Supplier terms, then in the event of any conflict these Conditions shall prevail over any Supplier terms.

4.9 No addition, alteration or substitution of these Conditions shall be binding unless agreed in writing between the Customer and an Authorised Supplier Representative

4.10 These conditions shall apply to the contract to the exclusion of all other terms and conditions on which any quotation has been given to the Customer, or which are referred to by the Supplier in any document, or subject to which the Purchase Order is accepted or purported to be accepted by the Supplier

4.11 Unless otherwise expressly stated all business will be conducted under ExtraCare standard terms and conditions of business.

4.12 In the event that the contract is started before the standard terms and conditions have been agreed the Extracare terms and conditions will apply.

5. **ORDER AMENDMENTS**

- 5.1 The Customer may send the Supplier an Order Amendment at any time prior to delivery
- 5.2 If the Order Amendment causes a change to the Price or delivery date than the Supplier must get Authorisation from the Customer prior to shipment of goods or services

6. **SUPPLY OF GOODS**

- 6.1 The Supplier shall ensure that the Goods shall:
 - 6.1.1 correspond with their description and quantity as set out in the purchase order or any applicable Specification;
 - 6.1.2 be of the best quality, material and workmanship, be without fault (within the meaning of the Sale of Goods Act 1979) and conform in all respect with the purchase order and any specification and/or design supplied or advised by the customer to the supplier. Br fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
 - 6.1.3 the Goods shall be new (unless otherwise specified in the Purchase Order), and correspond with any plans, drawings, designs, patterns, samples and specifications referred to in the Purchase Order
 - 6.1.4 where applicable, be free from defects in design, materials and workmanship and remain so for [12] months after delivery; and
 - 6.1.5 all Goods shall be properly packed, secured and despatched at the Supplier's expense to arrive in good condition at the time or times and the place or places specified in the Contract. If the Supplier or the Supplier's carrier delivers any Goods at the wrong time or to the wrong place, then the customer may deduct from the Price any resulting costs of storage or transport.
 - 6.1.6 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
 - 6.1.7 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the goods.
 - 6.1.8 will correspond with any relevant specifications, quantities, standards of performance, stipulations or samples provided in the contract
 - 6.1.9 shall not contain any asbestos or asbestos based products, unless specifically required in the contract
- 6.2 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
- 6.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 6.4 The customer shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Customer considers that the

Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 6.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

- 6.5 The Supplier shall indemnify the customer in full against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred or paid by the customer as a result of or in connection with: The Supplier shall ensure that the Goods shall:
- 6.5.1 breach of any warranty given by the Supplier in these Conditions;
 - 6.5.2 any act or omission of the Supplier or its employees, agents or sub suppliers in supplying and delivering the Goods;
 - 6.5.3 defective workmanship, quality or materials;
 - 6.5.4 an infringement or alleged infringement of any IPR caused by the use, manufacture or supply of the Goods; and
 - 6.5.5 any claim made against the customer in respect of any liability, loss, damage, injury, cost or expense sustained by the customer employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier
- 6.6 The customer's rights under these Conditions are in addition to the statutory conditions implied in favour of the customer by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (both as amended).

7. DELIVERY

- 7.1 Unless otherwise agreed in writing by the customer, any Goods shall be delivered, carriage paid, to such reasonable location as the Customer shall direct. The Supplier shall off-load the Goods at its own risk as directed by the customer
- 7.2 The Supplier shall ensure that:
- 7.2.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition
 - 7.2.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Delivery the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered
 - 7.2.3 if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 7.3 The Supplier shall deliver the Goods on the date specified in the Purchase Order or,, to the Customer's premises at [ADDRESS] or such other location as is set out in the Purchase Order or as instructed by the Customer before delivery (**Delivery**

Location) and during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

- 7.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and time of delivery shall be of the essence.
- 7.5 Where the Supplier fails to deliver any Goods at the correct place or time, the Customer shall be entitled to deduct from the Price of the Goods in question any costs incurred in respect of storage or transport of such Goods
- 7.6 Any Goods supplied in excess of Purchase Orders are subject to rejection and, in such an event, will be returned at the Supplier's risk and expense.
- 7.7 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 12.1.
- 7.8 If the Goods or any part of them are not delivered by the times or time specified in the Contract then the Customer may by written notice cancel any undelivered balance of the Goods. The Customer may also return for full credit and at the Suppliers expense any Goods that in the Customer's opinion cannot be utilised as a result of the cancellation
- 7.9 The customer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Customer has had a reasonable time to inspect them following delivery or performance or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.10 All third party engaged to deliver the Goods shall at no time be an agent of the customer and accordingly the Supplier shall be liable to the customer for the acts and omissions of all third party carriers engaged to deliver the Goods to the customer.

8. **SUPPLY OF SERVICES**

- 8.1 The Supplier shall from [the Commencement Date **OR** the date set out in the Purchase Order] and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 8.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the Customer and time of performance shall be of the essence.
- 8.3 In providing the Services, the Supplier shall:
 - 8.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - 8.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 8.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - 8.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

- 8.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 8.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - 8.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations, directives or other legal requirement of obligations in force from time to time;
 - 8.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
 - 8.3.9 as at the date of the Contract there is no material outstanding litigation, arbitration or other disputed matter to which the Supplier is a party which may have an adverse effect upon the fulfilment of the Supplier's liabilities, responsibilities and obligations pursuant to the Contract.
 - 8.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
 - 8.3.11 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.
- 8.4 The Supplier shall indemnify the customer in full against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred or paid by the customer as a result of or in connection with:
- 8.4.1 breach of any warranty given by the Supplier in relation to the Services; or
 - 8.4.2 any act or omission of the Supplier or its employees, agents or sub-Suppliers in supplying, delivering and performing the Services.

9. **INSPECTION**

- 9.1.1 The customer shall have the right to check progress of the Supplier's works or the works of sub-Suppliers at all reasonable times, to inspect and to reject Goods that do not comply with the Contract. The Supplier's sub-contracts shall reserve such right for the customer. Any inspection or approval shall not relieve the Supplier from its obligations under this Contract.

10. **SAFETY**

- 10.1.1 The customer shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials and all provisions relating to food.

11. **RISK/TITLE**

11.1 The goods shall remain at the risk of the supplier until delivery to the customer is complete (including off-loading and stacking) when ownership of, and risk in, the goods shall pass to the customer in accordance with the Contract and/or completion as appropriate. This shall not prejudice the customer's right of rejection.

11.2 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

12. **CUSTOMER REMEDIES**

12.1 Without prejudice to any other right or remedy which the Customer may have, if: (i) the Goods are not delivered on the due date, or (ii) the Goods do not conform with the Contract; or; (iii) the Supplier fails to commence the provision of, or to perform, the Services in accordance with the Contract or if any defect shall materialise within a period of [12] months after delivery and/or performance; the Customer reserves the right to:

12.1.1 to require the Supplier to repair the Goods and/or supply replacement Goods or Services in accordance with the Contract within the time stated in writing by the Customer or to provide a full refund of the price of the rejected Goods or Services (if paid);

12.1.2 to treat the Contract as discharged by the Supplier's breach (which includes any failure of the Goods and/or Services to meet the Contract requirements following repair and/or replacement) and require the repayment of any part of the price which has been paid;

12.1.3 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

12.1.4 to terminate the Contract with immediate effect by giving written notice to the Supplier; and following the Escalation Procedure below

A. Any dispute between the parties which arise in relation to this agreement shall in the first instance be dealt with by the customer services representative and supplier representative

B. If the representative are unable to agree on the action to be taken to remedy the dispute within 10 business days of meeting (or if they are able to agree an action but that action is not taken within a period agreed between the representatives), each party will, within 10 Business days nominate a director or partner of it to prepare and circulate to the other party a statement setting out its position on the relevant matter and its reasons for adopting that position. The statements will be considered by a director or partner of each party who will endeavour to agree within 20 Business days the actions required to be taken by each party to address the situation

C. If the directors / partners agree upon a resolution of the dispute, they will sign a statement setting out the terms of the resolution and the parties will procure that the resolution is promptly carried out, and in any event within 20 business days, unless otherwise agreed by the parties in writing

D. If no resolution to the dispute is agreed by the directors / partners, or not carried out to the agreed extent (as the case maybe) the customer will have the right to service notice on the company prior to end of the term of the agreement

12.1.5 where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier;

12.1.6 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

12.1.7 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods and/or services from a third party; and

12.1.8 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with the Contract.

12.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

12.3 The Supplier warrant to the Customer that the Supplier ensures that compatible spare parts are available to facilitate repairs (where applicable) for a period of at least 5 years from the delivery date

13. **CUSTOMER'S OBLIGATIONS**

13.1 The Customer shall:

13.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises to the extent necessary to enable the Supplier to perform the Contract for the purpose of providing the Services; and

13.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.

14. **CHARGES AND PAYMENT**

14.1 The price of the Goods and the Services shall be fixed and as stated in the Purchase Order and, unless otherwise so stated, shall be: -

14.1.1 exclusive of any applicable value added tax which shall be payable by the Customer (subject to receipt of a valid VAT invoice) at the rate prevailing at the relevant point; and

14.1.2 no increase in the Price may be made (whether on account of increased material, labour or other costs, fluctuation in rates of exchange or otherwise) without the prior written consent.

14.1.3 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the address for delivery as shown on the Purchase Order and any duties, imposts or levies other than value added tax and in the case of the Services inclusive of all costs and expenses incurred by the Supplier in the performance of the Services.

14.2 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting

information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.

- 14.3 The customer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms of sale.
- 14.4 The Customer shall pay the invoiced amounts within [30] days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier. This clause shall not apply to payments that the Customer disputes in good faith.
- 14.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 14.6 Without prejudice to any other right or remedy, the customer reserves the right to set off any amount owing at any time from the Supplier to the customer against any amount payable by the customer to the Supplier under the Contract or any other contract between the customer and the Supplier.
- 14.7 The Customer will not pay any more than 0.5% interest on late payment clauses
- 14.8 The Supplier is not entitled to suspend delivery of the Goods and performance of the Services as a result of any sums being outstanding.
- 14.9 The Supplier shall promptly make good at the Supplier's expense any defect in the Goods that the customer discovers under proper the usage during the first eighteen (18) months from the date of delivery, or for the period of the Supplier's own warranty for the Goods (whichever being the greater). Such defects may arise from the Supplier's faulty design, the Supplier's erroneous instructions as to the use or inadequate or faulty materials or poor workmanship or any other breach of the Supplier's obligations whether in this Contract or at law.

15. **INTELLECTUAL PROPERTY RIGHTS**

- 15.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.- All Intellectual property rights in the results of work arising out of or deriving from the Contract, including inventions, designs, copyright and knowledge shall be the Customers property and the Customer shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought
- 15.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 15.3 the Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer.
- 15.4 The supplier shall ensure that all technical information (including programs and programming information) arising out of or deriving from the Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of contract.

16. **INDEMNITY AND INSURANCE**

16.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

16.1.1 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or sub-suppliers;

16.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub-suppliers; and

16.1.3 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

16.2 For the duration of the Contract [and for a period of [5 years] thereafter], the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

16.3 The Supplier shall indemnify the Customer in full against all liability, loss including loss of profit and increased production costs, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Customer as a result of or in connection with:

16.3.1 breach of any warranty given by the Supplier in relation to the Goods and/or the Services;

16.3.2 any claim that the Goods infringe, or their importation, use of resale, infringes the patent, copyright, database right, registered design, 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 or drawing supplied by the Customer

16.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

16.3.4 any act or omission of the Supplier, the Supplier employees, agents or sub-Suppliers in supplying, delivering and/or installing the Goods; and

16.3.5 any act or omission of the Supplier, the Supplier employee's agents or sub-Suppliers in connection with the performance of the Services

17. **FORCE MAJEURE**

17.1.1 Neither party shall be liable to the other for any failure to perform its obligations under the contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this condition shall limit the obligations of the supplier/Supplier to use the best endeavours to fulfil their obligations under the contract

- 17.1.2 If either party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability in respect of the performance of its obligation as prevented by the Force Majeure
- 17.1.3 The party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Contract may be performed despite the continuance of the Force Majeure event.
- 17.1.4 If either party is prevented from performance of its obligations for a continuous period in excess of six (6) months due to a Force Majeure event either party may terminate the Contract forthwith on service of written notice upon the party so prevented.

18. CONFIDENTIALITY

- 18.1.1 The Supplier shall keep secret and confidential at all times both during and after the Contract, any and all Confidential Information which comes in to their possession at any time either before, during or after the period of the Contract.
- 18.1.2 The Supplier shall not use, copy, disclose or divulge such Confidential Information to any third party except with the express written consent of the customer. For the avoidance of doubt, any such permitted disclosure shall not affect the ownership of such Confidential Information
- 18.1.3 The Supplier shall disclose the Confidential Information only to those of its officers and employees to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Contract and to procure that such parties are made aware of and agree in writing to observe the obligations in this condition 18.
- 18.1.4 The obligations under this condition 15 shall survive the variation, expiry or termination of the Contract.

19. ASSIGNATION, NOVATION AND SUB-CONTRACTING

- 19.1.1 The Supplier shall not assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of the contract between the customer and the Supplier without the prior consent in writing of the customer. If the Supplier subcontracts any of its obligations, every act or omission of the sub-supplier shall be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the customer as if such act or omission had been committed or omitted by the Supplier itself
- 19.1.2 The supplier shall not sub-contract any part of the contract without the customers' written consent, but the customer shall not refuse such consent unreasonably.
- 19.1.3 Any consent given by the customer for the Supplier to subcontract any of its obligations shall not impose any duty on the customer to enquire as to the competency of any authorised sub-supplier. The Supplier shall ensure that any authorised sub-supplier has the appropriate capability and capacity to perform the relevant obligations and that the

obligations carried out by such sub-supplier are fully in accordance with those obligations

- 19.1.4 Where the customer pays the Supplier's undisputed invoices earlier than thirty (30) days from receipt in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant sub-suppliers within a comparable timeframe from receipt by the Supplier of such undisputed invoices from its sub-suppliers.
- 19.1.5 The customer shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the customer. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
- 19.1.6 The customer may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under these Terms and Conditions or any part thereof and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal.
- 19.1.7 The restriction contained in this condition shall not apply to subcontracts for materials for minor details or for any part of which the makers are named in the contract. The supplier will be responsible for all work done and goods supplied by the sub-Suppliers

20. **NO PARTNERSHIP OR AGENCY**

Nothing in the contract is intended to, or shall operate to, create between the parties a partnership agency, association, joint venture or other cooperative entity.

21. **TERMINATION**

- 21.1 The Customer shall be entitled to cancel the Purchase Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance, in which event the Customer's sole liability shall be to pay to the Supplier the price for the Goods and/or Services in respect of which the Customer has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation. The total of all payments made or due to the Supplier, including any termination pay, will not exceed the price. If the Supplier fails to submit a termination claim within 3 months of the date of the Customer's termination then the Customer shall have no further liability under this contract.
- 21.2 The Customer shall be entitled to terminate the Contract at any time with immediate effect on written notice without liability to the Supplier by giving notice to the Supplier at any time if:
 - 21.2.1 the Supplier/Supplier commits a material breach of any provision of this Contract which it does not remedy (where remedy is possible) within a period of 30 days of receipt of a written notice from the Customer specifying the breach and requiring remedy;
 - 21.2.2 an Insolvency Event occurs in respect of the Supplier.
- 21.3 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer

may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

21.4 On termination of the Contract or any part of it for any reason:

21.4.1 where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

21.4.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

21.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect including but not limited to clauses 15 and 16.

22. **ANTI-SLAVERY**

22.1 In performing its obligations under the Agreement, the Supplier shall and shall ensure that each of its sub-suppliers shall comply with:

1. all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
2. the Anti-slavery Policy, subject to the Client providing a copy of the Anti-Slavery Policy to the Supplier.

22.2 The Supplier represents and warrants that at the date of this Agreement:

1. its responses to the Supplier's slavery and human trafficking due diligence questionnaire are complete and accurate; and
2. neither the Supplier nor any of its officers, employees or other persons associated with it:
 - a) has been convicted of any offence involving slavery and human trafficking; and
 - b) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

22.3 The Supplier shall implement due diligence procedures for its own suppliers, sub Suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

22.4 The Client agrees that the Supplier may subcontract its obligations, the Supplier shall implement an appropriate system of due diligence, and audit designed to ensure compliance with the Anti-slavery Policy.

22.5 The Supplier shall notify the Client as soon as it becomes aware of:

1. any breach, or potential breach, of the Anti-slavery Policy; or

2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 22.6 The Supplier shall maintain a complete set of records to trace the supply chain of all Services provided to the Client in connection with this Agreement.
- 22.7 The Supplier shall indemnify the Client and shall keep the Client fully and effectively indemnified from and against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Client as a result of any breach of Anti-slavery Policy.
- 22.8 The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery Policy.
- 22.9 The customer may terminate the Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of the Anti-slavery Policy or this clause 20.

23. **DATA PROTECTION**

- 23.1 The Parties acknowledge that for the purposes of the General Data Protection regulation, the Customer is the Controller and the supplier is the Processor.
- 23.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 23.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 23.4.1 process that Personal Data only in accordance with Schedule A of this document, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 23.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the: (i) nature of the data to be protected; (ii) harm that might result from a Data Loss Event; (iii) state of technological development; and (iv) cost of implementing any measures;
 - 23.4.3 ensure that : (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A); (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they
 - (A) are aware of and comply with the Supplier's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(E) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled: (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer; (ii) the Data Subject has enforceable rights and effective legal remedies; (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(F) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

- 23.5 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless: (a) the Customer determines that the processing is not occasional; (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.6 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 23.7 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must: (a) notify the Customer in writing of the intended Sub-processor and processing; (b) obtain the written consent of the Customer; (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16 such that they apply to the Sub-processor; and (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 23.8 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.9 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.10 Each party shall comply with any Data Protection Act that applies in relation to any Personal Data processed in connection with this Agreement and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other party, including but not limited to, the provision of information regarding the existence, applicability and extent of any Data Protection Act to Personal Data.
- 23.11 Each party may from time to time request an amendment to this Agreement in order to ensure this Agreement remains in compliance with the requirements of the General Data Protection Regulation ("GDPR") (Regulation (EU) 2016/679).

Following such request, the Parties shall discuss in good faith whether any changes are required to this Agreement and where such changes are agreed they shall be made in writing and signed by each of the parties.

24. DISPUTE RESOLUTION

24.1 any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined using the following resolution escalation protocol;

24.1.1 by discussion between the named managers / first points of contact of the customer and the supplier;

24.1.2 in the event that agreement cannot be reached under clause 24.1.1 the matter shall be referred to [defined senior management position in customer and supplier];

24.1.3 in the event that agreement cannot be reached under clause 24.1.2 the matter shall be referred to arbitration administered by the international centre for dispute resolution in accordance with its arbitration rules.

25. TRADING ETHICS

25.1 The Supplier shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person or company in relation to the contract.

25.2 The Supplier shall not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010. The customer shall be entitled to terminate this order, and any other contract / agreement / order between the Supplier and the customer with immediate effect in the event that the Supplier, its associated persons, its agents, officers, employees, Suppliers or sub-Suppliers, with or without the Supplier's knowledge, jointly or severally fail to comply with the requirements of this clause.

25.3 In the event of any breach of this condition, the customer, shall without prejudice to any other rights the customer may possess, be at liberty forthwith to terminate this and any other contract and to recover from the supplier any loss or damage resulting from such termination

26. WORK ON OUR PREMISES

26.1 Where supplies require access to customer premises for the purposes of installation of the goods, the customer shall provide reasonable access and all services necessary to permit the supplier to fulfil the supplier obligations under the contract at mutually convenient times.

26.2 The supplier will commit no act or omission (and shall procure that supplier employees, agents, sub-Suppliers or other representatives do not commit such act or omission) at customer premises which would render the supplier liable to any person and the supplier shall observe all regulations and provisions in force relating to the safety of persons using the customer premises.

26.3 The supplier will at all times (and shall ensure that the supplier employees, agents sub-Suppliers or other representatives) comply with the customer reasonable instructions whilst on customer premises.

27. GENERAL

27.1 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it

could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than [NUMBER] weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

- 27.2 All notices under these Conditions shall be in writing and may be served by email, post or facsimile transmission addressed to the other party at the address given in the Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under the Contract and every such notice shall be deemed to have been served if served by post at the expiration of forty-eight hours after despatch of the same or if sent by facsimile transmission at ten hours local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.
- 27.3 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 27.4 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.
- 27.5 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 27.6 Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.
- 27.7 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 27.8 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

ENTIRE AGREEMENT

These Conditions together with those documents comprising the Contract constitute the entire agreement between the Parties in relation to its subject matter and supersede all prior agreements and understandings or discussions between the Parties

SCHEDULE A – Processing, Personal Data and Data Subjects

Please complete the following Schedule. This information will be, at the discretion of the Customer, accepted as per your submission, or used as a basis for further negotiation before mutual acceptance can be agreed.

If you or the solution you are proposing will not be receiving, collecting, processing or storing any personal data (with the definition that personal data is anything that can be used to identify individuals), please declare here :

We, or our proposed solution will / will not be receiving, collecting, processing or storing personal data (delete as applicable)

If you have answered that you will be, please complete the table below:

Description	Details[guidance given in brackets]
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students, members of the public, users of a particular website etc]</i>

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>
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