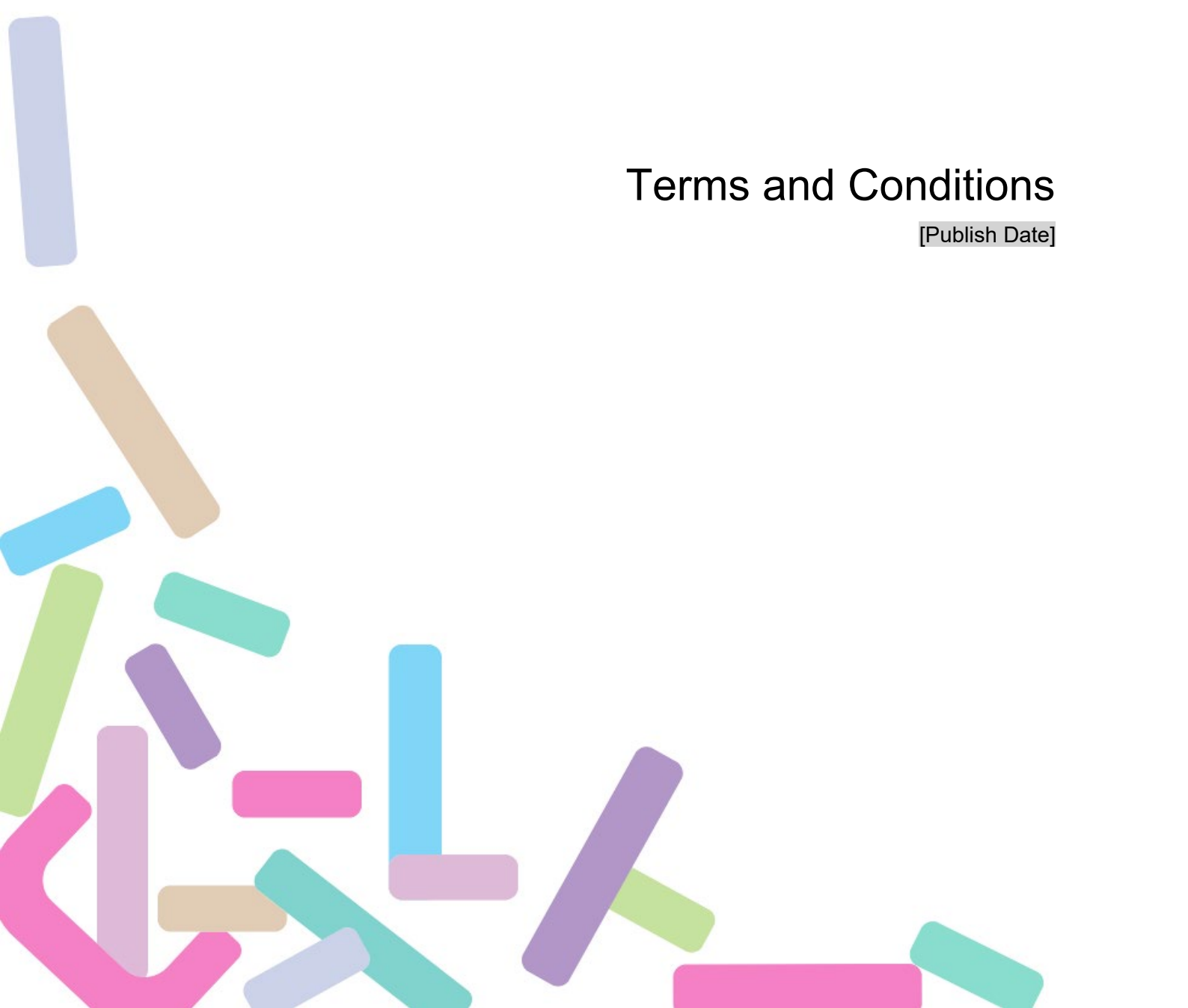


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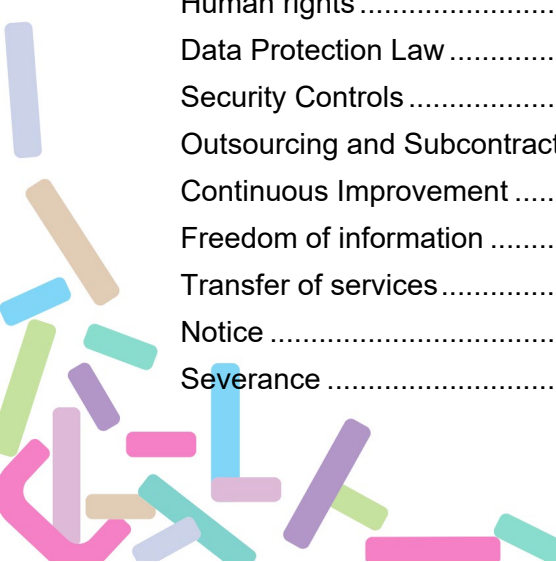
# Terms and Conditions

[Publish Date]



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## Definitions and Interpretation: In these Conditions, the following definitions apply:

**Customer:** Delt Shared Services Limited Company number 09098450 2 Derriford Park, Derriford Business Park, Derriford, Plymouth, England, PL6 5QZ

**Acceptance Criteria:** any criteria with which any Goods or Deliverables must comply as set out in the Purchase Order or the Specification or evidenced by written agreement between the parties.

**Annex:** any of the following annexes (if used): Annex 1 - TUPE Provisions; Annex 2 - Specification.

**Applicable Law:** the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Goods or the Services from time to time.

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

**Charges:** the charges for the Goods and Services referred to in Condition 15 and set out in the Purchase Order.

**Codes of Practice:** the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to Customer FOIA obligations, as amended, updated and replaced from time to time.

**Conditions:** these terms and conditions, including any Annexes.

**Confidential Information:** all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by Customer or its Representatives to the Supplier or its Representatives, including any information which is marked confidential or private and any information relating to Customer members, customers, clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property.

**Contract:** the contract between Customer and the Supplier for the provision of the Goods and Services comprising the Purchase Order and these Conditions.

**Data Protection Law:** the Data Protection Act 2018, all related and subordinate legislation and any guidance or codes of practice issued by the Information Commissioner.

**Deliverables:** all products of the Services (whether tangible or not), including Documents and data (and drafts of either) and the media on which they are recorded.

**Delivery Location:** the address specified by Customer in the Purchase Order where the Goods are to be delivered, or the Services performed. Where no address is specified, the Goods shall be delivered to and the Services shall be performed at Customer Limited, 2 Derriford Business Park Plymouth PL6 5QZ.

**Delt Representative:** any individual named as such in the Purchase Order or such person or persons as notified to the Supplier by Customer in writing from time to time.

**Document:** includes any document in hard or electronic copy.

**EIR:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Goods:** the goods (or any part of them) provided, or to be provided, by the Supplier under the Contract as set out in the Purchase Order and/or Specification or otherwise provided as part of the Services, in all cases whether or not manufactured or produced by the Supplier and including Deliverables to the extent that they comprise anything tangible or in physical form.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property Rights:** all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets).

**Public Body:** any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

**Purchase Order:** the written order from Customer for Goods and Services incorporating or attached to these Conditions.

**Premises:** any premises owned, leased to, controlled or occupied by Customer or its Representatives which are made available for use by the Supplier or its Representatives for the delivery or performance of the Goods and Services.

**Representatives:** employees, officers, agents, advisors, sub-contractors, suppliers or other representatives.

**Request for Information:** a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.

**Services:** the services provided or to be provided by the Supplier under the Contract as set out in the Purchase Order and/or Specification.

**Specification:** in relation to Goods, any description of them (including any relevant plans or drawings and any description incorporated by reference), and in relation to Services, any description of them (including any Deliverables to be produced) set out in Annex 2.

**Supplier:** the person, firm or company to whom the Purchase Order is addressed.

**TUPE:** Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and any successor legislation.

1. In these Conditions, the following definitions apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its successors or permitted assigns.
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as a mended or re-enacted.
- any phrase introduced by the terms **including, include, or**
- any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to **writing** or **written** includes faxes and e-mails.

2. In the event of any inconsistency or conflict between any Purchase Order and these Conditions, these Conditions shall prevail.

3. In the event of any inconsistency or conflict between any Annex and these Conditions, the Annex shall prevail.

## Formation of Contract

4. The Contract shall come into existence and take effect on Customer issue of a Purchase Order for the Goods and Services and shall remain in full force and effect until either:

- i. the parties have discharged all their obligations under it (at which point it shall expire); or
- ii. it is terminated in accordance with these Conditions. These Conditions apply to the supply of the Goods and Services to the exclusion of any other terms that the Supplier may seek to impose or incorporate (including any standard trading terms of the Supplier), or which are implied by trade, custom, practice or course of dealing.

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

## Supplier's warranties

5. The Supplier shall provide the Goods and Services specified in the Purchaser Order and/or the Specification in accordance with these Conditions.
  - a. The Supplier warrants that:
    - i. it will meet any dates set out in the Purchase Order or Specification for the delivery of the Goods or the performance of the Services or (where no dates are so specified) then the Supplier shall deliver the Goods and perform the Services within a reasonable time.
    - ii. the design, construction and quality of the Goods and the method and quality of performance of the Services will comply in all respects with all relevant requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided.
  - b. it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
  - c. it will not do or omit to do anything which may cause Customer to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs.
  - d. It's Representatives will behave in a polite and courteous manner at all times when on the Premises.
  - e. the Goods and Services will conform as to their quantity, quality and description with the Purchase Order or Specification, including with all Acceptance Criteria.
  - f. the Goods and Services will be fit for any purpose and meet any standard or performance levels set out in the Purchase Order or Specification, or which can reasonably be expected for Goods and Services of the type in question.
  - g. the Goods and Services will conform to any literature or description supplied by the Supplier to Customer prior to the issue of the Purchase Order.
  - h. it will perform the Services with all reasonable care, skill and diligence and in accordance with best practice in the Supplier's industry, profession or trade.
  - i. it will use personnel to provide the Services who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all its obligations in accordance with the Contract.
  - j. it will use the best quality goods, tools, materials, standards and techniques in performing the Services. (without prejudice to the generality of the foregoing warranties) the Goods will:

- i. be of sound materials and workmanship.
  - ii. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose
  - iii. be equal in all respects to the examples, samples, patterns or specifications provided or given by Customer; and
  - iv. comply with all applicable statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling and delivery.
- k. it will use personnel to provide the Services who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all of its obligations in accordance with the Contract.
- l. it will comply with the International Financial Reporting Standard (for Small and Medium-sized Entities (SMEs)) and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

## Supplier's general undertakings

### 6. The Supplier undertakes to:

- a. provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Goods or the Services.
- b. co-operate with Customer and any third party nominated by them in all matters relating to the Contract.
- c. comply with all reasonable instructions of Customer.
- d. hold all materials, equipment and tools, drawings, specifications and data supplied by Customer to the Supplier in safe custody at its own risk, maintain the materials in good condition until returned to Customer, and not dispose of or use the materials other than in accordance with Customer written instructions or authorisation.
- e. use all reasonable endeavours to transfer to Customer the benefit of any warranty or guarantee given by the manufacturer of any Goods of which the Supplier is not the manufacturer.
- f. promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the delivery of the Goods or the performance of the Services and leave the Premises in a clean and tidy condition, failing which Customer may dispose of them and make good the Premises at the expense of the Supplier; and
- g. notify Customer as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware.

## Variation of the Services

7. The Customer reserves the right on giving written notice to the Supplier from time to time to require changes to the Services (including by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the

Services are to be performed or the locations where the Services are to be provided) for any reason whatsoever. Such a change is hereinafter called "a Variation".

8. In the event of a Variation the Charges may also be varied. Such Variation in the Charges shall be calculated by Customer and agreed in writing with the Supplier and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
9. The supplier shall provide such information as may be reasonably required to enable such varied price to be calculated.

## Supplier's personnel

10. Customer reserves the right:
  - a. to refuse to admit to the Premises and to require the Supplier to replace with another suitably qualified person any Representative of the Supplier whose admission would in the reasonable opinion of Customer be undesirable; and
  - b. to request the replacement of any Representative of the Supplier who in Customer's reasonable opinion is not suitably qualified or experienced to perform the Services.
11. Where any Representative of the Supplier is named on the Purchase Order or in the Specification as fulfilling a specific role in connection with the performance of the Services, the Supplier will use all reasonable endeavours to ensure that the named Representative continues to fulfil the specified role and will not replace him or her without Customer written consent, such consent not to be unreasonably withheld.
12. If reasonably so requested by Customer and subject to compliance by both parties with Data Protection Law, the Supplier shall promptly provide a list of the names and addresses of all persons who may at any time require admission to the Premises in connection with the delivery of the Goods and performance of the Services, specifying the role in which each such person is concerned with the Supplier and giving such other particulars as Customer may require.

## Delivery of Goods (excluding Deliverables)

13. The Supplier undertakes:
  - a. to deliver the Goods to the Delivery Location during Customers normal opening hours on a Business Day and by the date specified within this document; and
  - b. to ensure that the Goods are packed and secured in such a manner as to reach the Delivery Location in good condition under normal conditions of transport.
  - c. Each delivery of Goods must be accompanied by a delivery note which shows the date of the Purchase Order, 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.



- d. The Supplier must not deliver the Goods in instalments unless it has Customers prior written consent to do so in which case the Goods must be invoiced, and may be paid for, separately.
- e. Delivery of the Goods shall be completed when the Goods have been unloaded at the Delivery Location and a Delt Representative has inspected the Goods and confirmed that he is satisfied with the unloading. However, such confirmation shall not be deemed to be confirmation that the Goods conform with the Contract and is without prejudice to any right of rejection which may accrue to Customer.
- f. If for any reason Customer is unable to accept delivery of the Goods at the time when they are due and ready for delivery the Supplier shall use all reasonable endeavours to store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery, and Customer shall be liable to the Supplier for the reasonable costs (including insurance) of his so doing.

## Testing and acceptance of Goods and Deliverables

### 14. All Goods and Deliverables must meet any relevant Acceptance Criteria. D

- a. Customer may test Goods (excluding Deliverables) for conformity with Acceptance Criteria at any time during the period of 15 Business Days following their delivery.
- b. Customer may test Deliverables at any time during the period of 15 Business Days following notification by the Supplier of completion of the Services (or relevant part of the Services) and production at the Premises of the Deliverables.
- c. If any Goods or Deliverables fail to meet their Acceptance Criteria Customer will notify the Supplier accordingly specifying the non-conformity.
- d. In the case of Goods (excluding Deliverables) which fail to meet the Acceptance Criteria Customer may either at Customer discretion: opt to reject them and require a full credit or specific performance as required; or require the Supplier to remedy the non-compliance at its own expense either at the Premises or elsewhere and redeliver the Goods to Customer within 15 Business Days of Customer notification under Condition 8.4, following which Customer shall have a further 15 Business Days in which to re-test the Goods for conformity with the Acceptance Criteria.
- e. In the case of Deliverables which fail to meet the Acceptance Criteria, Customer will request the Supplier to remedy the non-compliance at its own expense within 15 Business Days of Customer notification following which Customer shall have a further 15 Business Days in which to re-test the Goods for conformity with the Acceptance Criteria.
- f. any Goods (including Deliverables) fail to meet the Acceptance Criteria on re- testing under Conditions 8.5.2 or 8.6, Customer may reject them and exercise its rights under this agreement.

## Risk in Goods

- 15. Risk in the Goods (excluding Deliverables) shall pass to Customer on completion of delivery. Risk in Deliverables shall pass to Customer on acceptance following Testing and acceptance of goods and deliverables.

## Title to Goods

16. Title to the Goods shall pass to Customer on payment of the Charges for them.

## Remedies

17. If: the Supplier fails to deliver the Goods and/or perform the Services by the date required under these Conditions; or the Supplier fails to comply with its warranties set out; Delt may at their discretion:

- a. refuse to accept any subsequent performance of the Services which the Supplier attempts to make.
- b. refuse to accept any delivery of Goods which the Supplier attempts to make.
- c. reject any Goods (in whole or in part) whether title has passed and to return them to the Supplier at the Supplier's own risk and expense.
- d. recover from the Supplier any costs incurred by Customer in having a third party provide substitute Goods and/or Services or in performing the Services itself where Customer has paid in advance for Services that have not been performed by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier immediately.
- e. claim damages for any additional costs, loss or expenses incurred by Customer which are attributable to the Supplier's failures
- f. terminate the Contract with immediate effect by giving written notice to the Supplier.

18. The rights set out in Condition 11.2 are cumulative and the exercise by Customer of any one of them shall not preclude it from exercising any other.

19. Delt Shared rights under this Condition 11 are in addition to its rights and remedies implied by statute and at common law.

## Obligations

20. Customer will:

- a. provide the Supplier with reasonable access to the Premises at reasonable times during Business Days for the purpose of providing the Services or delivering the Goods;
- b. where appropriate, provide reasonable access to facilities on the Premises; and
- c. provide such information as the Supplier may reasonably request in connection with the provision of the Goods and/or the Services provided that Customer (acting reasonably) considers such information necessary for the purpose of providing the Goods and/or the Services.

## TUPE

21. The parties do not intend that TUPE will apply on commencement, during or on termination of the arrangements under the Contract.

22. To the extent that the TUPE applies, the parties will comply with their respective obligations.

## Liability

23. a reference to Customer liability for something is a reference to any liability whatsoever which Customer might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from Delt's negligence or from negligence for which Customer would otherwise be liable. Customer is not in breach of the Contract, and does not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Supplier's breach of the Contract.

24. Customer shall not have any liability for:

- a. any indirect or consequential loss or damage.
- b. any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability.
- c. any damage to goodwill or reputation.
- d. loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Supplier or its Representatives; or any loss, damage, costs or expenses suffered or incurred by any third party.

25. Nothing in these Conditions restricts Customer liability for:

- a. death or personal injury resulting from negligence for which it is responsible; or
- b. it-s fraud (including fraudulent misrepresentation).

## Charges and payment

26. The Charges for the Goods and Services and the date or dates on which they are payable are set out in the Purchase Order or any Annex; and

27. (in the case of Goods) shall be inclusive of any costs of packaging, insurance and carriage.

28. (in the case of Services) shall include all costs and expenses of the Supplier and its Representatives directly or indirectly incurred in connection with their performance; and

29. unless otherwise specified shall be inclusive of any amounts in respect of valued added tax chargeable from time to time (VAT).

30. Unless otherwise provided in the Purchase Order, the Supplier may invoice the Charges at any time on or after whichever is the later of acceptance of the Goods or completion of the Services.

31. Invoices must include the Purchase Order number and sufficient supporting information to enable Customer to identify the Goods and Services for which payment is claimed.
32. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Customer, the Supplier shall provide a valid VAT invoice.
33. Where Charges for the Services are based on the cost of time and materials at rates set out in the Purchase Order, the Supplier shall maintain and provide to Customer complete and accurate records of the time spent, and materials used in providing them and attach such records to the relevant invoice.
34. Subject to compliance by the Supplier with the foregoing provisions of this Condition 15, Customer shall pay the Charges as invoiced within 30 days of receipt of the invoice.
35. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against Customer to justify withholding payment of any amount in whole or in part. Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Customer to the Supplier.

## Intellectual property rights

36. The Supplier warrants that:
  37. the Supplier has all Intellectual Property Rights, permissions, licences and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and
  38. in respect of the Goods and Deliverables, the Supplier has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Customer, it has full and unrestricted rights to transfer full title to all such items to Customer.
39. Unless otherwise provided in the Specification, the Supplier grants to Customer, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the products of the Services, including all Deliverables.
40. The Supplier shall, promptly at Customers request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as Customer may from time to time require for the purpose of securing for Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to Customer in accordance with the Contract.
41. Customer reserves to itself or its licensors all Customer Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Supplier any rights in Customer Materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Supplier to carry out its obligations under the Contract.

## Indemnity

42. The Supplier shall indemnify, and shall keep indemnified, Customer 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 Customer as a result of or in connection with:
- a. any claim made against Customer for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Goods or Services with the Contract.
  - b. Any claim made against Customer 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;
  - c. any claim made against Customer arising out of, or in connection with the negligence of the Supplier or its Representatives whilst on, entering, or leaving the Premises; any claim made against Customer for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, use of the Goods or Services, property or the Premises caused by the Supplier or its Representatives (including any damage or destruction to, corruption of, or loss of data held by Customer);
  - d. any breach of Data Protection Law by the Supplier or its Representatives; and
  - e. any claim made against Customer by a third party resulting from, or arising out of any breach by the Supplier of its obligations.
43. The Supplier shall not be liable to Customer for any losses, damage or injury to the extent that they are caused by or arise directly out of the act or omissions of Customer in breach of its obligations under the Contract.

## Insurance

44. For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under the Contract, including death or personal injury, or loss of or damage to property.
45. The insurance required under Condition 18 shall include as a minimum:
- a. employer's liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] per claim;
  - b. public liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] per claim;
  - c. professional indemnity insurance with a limit of not less than [two] million pounds [(£2,000,000)] per claim; and
  - d. product liability insurance with a limit of not less than [two] million pounds (£2,000,000) per claim.
46. The Supplier shall, at the request of Customer, produce to Customer a valid certificate of insurance and such other written documentation as is necessary.
47. The Supplier shall not do or permit anything, or make any omission, which might cause any insurance to be voided.

48. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities incurred in connection with the Contract.

49. The Supplier shall inform Customer in writing whenever there is any change to the insurance.

## Confidentiality

50. Subject to Condition 19.2, the Supplier shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by Customer.

51. The Supplier undertakes:

- a. to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Supplier's obligations under the Contract and shall ensure that all such Representatives are subject to obligations of confidentiality.
- b. The Supplier and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract
- c. that any person employed or engaged by the Supplier in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of Customer;
- d. to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Condition 19; and
- e. that, without prejudice to the generality of the foregoing, neither the Supplier nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.

52. The provision shall not apply to any information which:

- a. is or becomes public other than by breach of this Condition or is in the possession of the Supplier without restriction on disclosure before the date of receipt from the disclosing person; or
- b. is independently developed by the Supplier without access to the Confidential Information; or
- c. must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

## Termination

53. Without limiting its other rights or remedies, Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- a. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of receipt of written notice of the breach;
- b. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- c. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- e. the Supplier (being an individual) is the subject of a bankruptcy petition order
- f. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- g. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company); a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- h. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- i. the Supplier becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used).
- j. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- k. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

54. Without limiting its other rights or remedies, Customer may terminate this Agreement, in whole or in part, at any time for its convenience by providing the Contractor with thirty (30) days written notice.

- a. Upon receipt of such notice, the Contractor shall immediately cease work, except as necessary to secure the work in progress and to protect materials and equipment.
- b. In the event of such termination, the Client shall pay the Contractor for all work performed up to the effective date of termination and for any reasonable costs

incurred directly as a result of the termination, but not for any anticipated profits or other losses.

- c. No Party shall incur any penalty or additional liability solely by reason of the Client exercising its right to terminate for convenience under this clause. All payments made under this clause shall be in full and final satisfaction of any claims arising out of the termination for convenience.

## Consequences of termination

55. On expiry or termination of the Contract or any part of it for any reason the following shall apply:
56. where the Services are terminated, the Supplier shall immediately deliver to Customer all Deliverables, whether or not then complete, and return all Customer Materials to Customer. 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 the Deliverables and/or Customer Materials. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose;
57. Termination of this Agreement shall not affect any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement that existed at or before the date of termination.

## Publicity

58. The Supplier shall not make any press announcements or publicise the existence or terms of the Contract without prior written consent and shall ensure the observance of the provisions of this Condition 22 by its Representatives.
59. Customer shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Supplier.

## Dispute resolution

60. The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:
  - a) the dispute shall first be referred, on the request of either party, to a senior manager within each of the parties; and
  - b) if the dispute cannot be resolved by the parties' senior managers within 10 Business Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation

61. The following provisions shall apply to any such reference to mediation:



- a. the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
  - b. both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an
  - c. agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
62. to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.
63. If the parties are able to resolve the dispute through mediation under this Condition 23, the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.
64. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
65. Nothing in this Condition shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
66. The Supplier shall continue to provide the Services and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Condition.

## Conflict of interest

67. The Supplier shall take all appropriate steps to ensure that neither it nor any of its Representatives is placed in a position where (in the reasonable opinion of Customer) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Supplier or its Representatives and, on the other hand, such persons' duties owed to Customer under the provisions of the Contract.
68. The Supplier must disclose to Customer full details of any actual or potential conflict of interest in writing and comply with any reasonable instructions of Customer in connection with their resolution.

## Corruption

69. The Supplier undertakes to:
- a. comply with all applicable laws and regulations and codes relating to anti bribery and anti-corruption including, but not limited to, the Bribery Act 2010;

- b. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- c. comply with anti-corruption policies disclosed to
- d. the Supplier from time to time;
- e. ensure that any of its Representatives associated with the supply of the
- f. Goods and / or the Services comply with this clause 25; and
- g. immediately notify Customer if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.

70. For the purposes of this clause 1 the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.

71. Customer shall be entitled to terminate the Contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Representative:

72. offers or agrees to give any person working for or engaged by Customer or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and Customer or any Public Body, including its award to the Supplier and any of the rights and obligations contained within it;

73. has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by Customer or any other Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Customer before the Contract is entered into; breaches the undertaking set out in clause 25.1; or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

74. "loss" shall include, but shall not be limited to:

- a. Customer costs in finding a replacement Supplier;
- b. direct, indirect and consequential losses; and
- c. any loss suffered by Customer as a result of a delay in its receipt of the Goods and/or Services.

## Audit

75. The Supplier shall keep and maintain until six years after the Contract has come to an end, or for such longer period as may be specified by Customer in writing from time to time:

- a. all Information relating to the Contract.
- b. full and accurate records of the following:
- c. the Services provided under the Contract;

76. all Charges paid by Customer; and
77. such other information as Customer specifies in writing from time to time.
78. The Supplier shall on request afford Customer,
79. Representatives or Customers auditors such access to such information or records) as may (in the reasonable opinion of Customer) be required by Customer in order to comply with its legal obligations (including its obligations under FOIA and its obligations in connection with the Best Value Duty).

## Discrimination

80. The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in the provision of the Goods and/or the Services.
81. The Supplier shall take all reasonable steps to secure the observance<sup>1</sup> by all of its Representatives employed in the performance of the Contract.
82. The Supplier shall: have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to Customer on a regular basis as agreed with Customer; and
  - a. actively endeavour to achieve a workforce representative of the ethnic diversity of the area.

## Human rights

83. The Supplier shall (and shall use its reasonable endeavours to procure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
84. The Supplier shall undertake, or refrain from undertaking, such acts as Customer requests so as to enable Customer to comply with its obligations under the Human Rights Act 1998.

## Data Protection Law

85. The Supplier shall comply at all times with Data Protection Law and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause Customer to breach any of its obligations under Data Protection Law.
86. If the Supplier, pursuant to its obligations under the Contract, processes Personal Data (as defined in the Data Protection Act 2018) on behalf of Customer, the Supplier shall:
  87. process the Personal Data only in accordance with instructions from Customer;

88. process the Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under the Contract;
89. implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
90. notify Customer promptly if it becomes aware of any breach of any of its measures put in place
91. take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
92. obtain prior written consent from Customer in order to transfer the Personal Data to any third party for the provision of the Goods and Services;
93. ensure that any personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations
94. The Supplier shall fully protect personal data in compliance with relevant data protection legislation, ensuring prevention of unauthorised access, use, damage, and disclosure.
95. ensure that none of those personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the other party;
96. Notify Customer immediately if it receives:
  - a. a request from a Data Subject (as defined in the Data Protection Act 2018) to have access to that Data Subject's Personal Data; or
  - b. a complaint or request relating to the other party's obligations under Data Protection Law;
  - c. provide Customer with full co-operation and assistance in relation to any complaint or request made, including by providing the other party with full details of the complaint or request; and not transmit or process Personal Data outside the European Economic Area without the prior written consent of the other party and, where the other party so consents to a transfer, to comply with:
  - d. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 2018; and
  - e. any reasonable instructions notified to it by the other party.
97. **Responsibility and Compliance:** The Supplier shall take responsibility for processing personal data in compliance with data protection principles and relevant legislation.

98. **Fair and Transparent Processing:** The Supplier shall process personal information in a fair, lawful, proportionate, and transparent manner, collecting only necessary information for service provision.
99. **Data Accuracy and Retention:** The Supplier shall ensure the accuracy and currency of personal information and establish a retention schedule to limit data retention to necessary periods.
100. **Organisational and Technical Measures:** The Supplier shall implement organisational and technical measures to maintain the integrity and confidentiality of personal information. Independent accreditation and assurance over service controls shall be provided.
101. **Cooperation on Assessments:** The Supplier shall reasonably cooperate and assist in data protection impact assessments or compliance matters related to processing activities.
102. **Data Sharing and Transfer:** The Supplier shall only share personal data with third parties under lawful grounds and with Delt's prior written consent or as permitted by contractual terms.

## Security Controls

103. **Commitment to Security:** The Supplier acknowledges the importance of safeguarding employees and company assets, encompassing physical and intangible assets, particularly information. Any significant breach in personnel, physical, information, or IT security may result in disruptions to Delt and/or its customers. Therefore, the Supplier agrees to uphold a similar dedication to security.
104. **Minimum Requirements:** The Supplier shall establish and enforce internal policies and procedures covering personnel, processes, and technology. These measures shall include but not be limited to background checks for employees.
105. **Training and Communication:** The Supplier shall conduct internal communication and provide comprehensive training to staff to ensure the effective implementation of information security controls and procedures.
106. **Risk Management:** The Supplier shall implement a process to identify and manage emerging cyber security risks, regularly reviewing such risks to develop strategies for detection, prevention, and response. The focus should be on minimising incidents affecting products and services provided to Delt.
107. **Security Controls Implementation:** The Supplier shall maintain security controls and monitoring systems proportionate to the risk, aiming to prevent, detect, and respond to security incidents. These controls shall align with established policies and procedures.
108. **Effectiveness Review:** The Supplier shall regularly review the effectiveness of applied security controls to ensure ongoing adequacy.

109. **Independent Accreditation:** The Supplier shall obtain independent accreditation and assurance of security control implementation. Notifications to Delt shall be provided in case of lapses or non-renewal of accreditations.
110. **Anomaly Detection:** The Supplier shall maintain necessary controls to detect security anomalies promptly.
111. **Incident Response Plans:** The Supplier shall develop plans outlining appropriate actions to respond to security incidents and events and to facilitate recovery.
112. **Incident Reporting:** Supplier shall promptly inform Delt upon becoming aware of any cyber security incident affecting or potentially affecting Delt and/or its customers.
113. **Incident Reporting and Cooperation:** The Supplier shall promptly report any unauthorised disclosure of personal data processed on Delt's behalf and fully cooperate with remediation efforts and investigations.
114. **Intellectual Property Rights:** The Supplier shall respect intellectual property rights and comply with legislation governing patents, trademarks, copyright, and other intellectual property rights.
115. **Commitment to Improvement:** The supplier shall share a commitment to continuously improve goods and services.
116. **Business Continuity and Disaster Recovery Plans:** The Supplier shall develop, maintain, and test business continuity and disaster recovery plans in accordance with contractual and service level requirements.
117. **Record Maintenance:** The Supplier shall maintain adequate internal records to ensure proper compliance with obligations to Delt.
118. **Compliance Monitoring:** The Supplier shall monitor the supply chain's compliance with the Code of Conduct and immediately notify Delt of any issues or concerns.

## Outsourcing and Subcontracting

119. The Supplier recognises that outsourcing and subcontracting may be utilised for innovation, resource supplementation, and operational efficiency. However, subcontracting Delt's services requires prior approval from Delt.
120. **Subcontracting Requirements:** Subcontracting shall require prior written approval, transparent support locations, adherence to the Supplier Code of Conduct, risk assessments, and the Supplier's responsibility for subcontractor actions. Confidentiality of Delt's information shall be maintained.

## Continuous Improvement

121. The Supplier shall secure continuous improvement in the way in which the Goods and Services are provided, having regard to a combination of economy, efficiency and effectiveness.

## Freedom of information

122. The Supplier acknowledges that Customer is subject to the requirements of FOIA and EIR and shall assist and co-operate with Customer (at the Supplier's expense) to enable Customer to comply with its obligations under FOIA and EIR. The Supplier shall act in accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.

123. The Supplier shall and shall procure that its Representatives shall:

124. transfer any Request for Information to Customer as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;

125. provide Customer with a copy of all Information in its possession or power in the form that Customer requires within five Working Days (or such other period as Customer may specify) of Customer requesting that Information; and

126. provide all necessary assistance as reasonably requested by Customer to enable Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

127. Customer shall be responsible for determining (in its absolute discretion) whether any Information:

128. is exempt from disclosure in accordance with the provisions of FOIA or EIR;

129. is to be disclosed in response to a Request for Information, and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by Customer.

130. The Supplier acknowledges that Customer may be obliged under the FOIA or EIR to disclose Information:

- a. without consulting with the Supplier, or
- b. following consultation with the Supplier and having taken its views into account.

## Transfer of services

131. Where Customer intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement supplier, the Supplier shall use all reasonable endeavours to ensure the seamless transition of the Services to Customer or a replacement supplier and to ensure that the transition is effected with the minimum of disruption to Customer.

132. The Supplier shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, report and any information, whether held in electronic or written form, which Customer (acting reasonably) considers necessary.

## Notice

133. Any notice to be served on either of the parties hereto by the other shall be sent by pre-paid recorded delivery or first class post or by e-mail to the address of the relevant party as detailed in the Contract or, such other address as notified by one party to the other in writing from time to time.

## Severance

134. If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of Customer it may be severed from the rest of the Contract which shall remain in full force and effect unless Customer in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event Customer shall be entitled to terminate the Contract by 10 Business Days' written notice to the Supplier.

## Waiver and accumulation of remedies

135. The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

136. Unless a right or remedy of Customer is expressed to be an exclusive right or remedy, the exercise of it by Customer is without prejudice to rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under or in connection with the Contract. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.

137. Customer rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

## Variations

138. Neither Customer nor the Supplier shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.



## Assignment or sub-contracting

139. The Supplier shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without prior written consent.
140. The Supplier shall not sub-contract the performance of the Services or any part of them without prior written consent and any such consent shall not relieve the Supplier of any of its obligations under the Contract.
141. Where the Supplier enters into a sub-contract with a third party in connection with the Contract, it shall cause a term to be included in such sub-contract that requires payment to be made of undisputed sums by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
142. Customer may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations, being:
  - a. A Minister of the Crown pursuant to any order under the Ministers of the Crown Act 1975;
  - b. any other local authority which has sufficient financial standing or financial resources to perform the obligations; or
  - c. Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.

## Law and jurisdiction

143. The Contract shall be construed and be subject to English law and the exclusive jurisdiction of the English Courts.

## Rights of third parties

144. No person other than Customer or the Supplier shall have any rights under the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## Whistleblowing policy

145. The Supplier shall comply with Delt Shared Services whistleblowing procedure, which ensures that employees of the Supplier are able to bring to the attention of
146. Customer malpractice, fraud and breach of laws on the part of the Supplier without fear of disciplinary and other retribution or discriminatory action. Delt Shared Services Whistleblowing Policy can be found on the following link:  
[www.plymouth.gov.uk/strategicprocurementunit](http://www.plymouth.gov.uk/strategicprocurementunit).

## TUPE Provisions

147. the following definition shall apply, together with the definitions contained within the main Conditions of Purchase:

- a. **Assigned Employees:** any person employed by the Supplier who is engaged wholly or mainly in connection with and who is assigned to the provision of the Services or that part which is transferring under a Relevant Transfer or who would have been employed if he had not been dismissed in the circumstances described in Regulation 7(1) of the Transfer Regulations;
- b. **Acquired Rights Directive:** means Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses
- c. **Employee Liability Information:** that information specified in Regulation 11 of the Transfer Regulations or any analogous provision;
- d. **Employment Liabilities:** All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of parttime workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
- e. **New Supplier:** any person contracted to provide services to the Customer the same as or similar to the Services at any time in substitution of the Supplier;
- f. **Prospective Tenderer:** a person who has or is invited to submit a tender in relation to the provision of the Services (in whole or in part) or services of a similar nature to any of those provided by the Supplier;
- g. **Supplier's Final Staff List:** the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.
- h. **Supplier's Provisional Staff List:** the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.
- i. **Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Customer or a New Supplier by virtue of the application of the Transfer Regulations.
- j. **Relevant Transfer:** a transfer to the Customer or a New Supplier of the Services or any part of the Services at any time during the Term or at the end of the Term or on the date of early termination of the Contract;
- k. **Staff:** any employee, worker or agent of, or other person from time to time engaged or employed by the Supplier in connection with the provision of the Services;
- l. **Staffing Information:** in respect of the Staff from time to time:

- i. ages, dates of commencement of continuous employment or engagement and gender;
  - ii. details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise engaged;
  - iii. the identity of their employer or engaging entity;
  - iv. their relevant notice periods and any other terms relating to termination of employment or engagement, including but not limited to any redundancy procedures and contractual redundancy payment schemes;
  - v. the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
  - vi. details of other employment-related benefits, including but not limited to medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
  - vii. any outstanding or potential contractual, statutory or other liabilities (including personal injury claims);
  - viii. details of any long-term sickness absence, maternity or other statutory leave or other long-term absence; and
  - ix. copies of all contracts setting out the terms and conditions of their employment or engagement; and
  - x. Employee Liability Information and any other information relating to the Assigned Employees as may reasonably be required by the Customer and/or a Prospective Tenderer and/or a New Supplier for the purposes of the application of the Transfer Regulations.
- m. **Sub-Contractor:** a person to whom the Contractor sub-contracts the whole or part of the provision of the Services;
- n. **Term:** the term of the Contract;

## TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and any successor legislation).

148. This contract envisages that subsequent to its commencement, the identity of the Supplier of the Services (or any part of the Services) may change (whether as a result of termination of this contract, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Customer or New Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

149. The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this contract or otherwise, on request from the Customer and at such times as requested by the Customer, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Customer, including information as to the application of the Transfer Regulations to the employees. The Supplier shall notify the Customer of any material changes to this information as and when they occur.

150. At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Customer and/or, at the direction of the Customer, to the New Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.
151. The Customer shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective New Supplier for any services that are substantially the same type of services as the Services (or any part of the Services).
152. The Supplier warrants to the Customer and the New Supplier that the
153. Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
154. The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Law.
155. The Customer regards compliance with this special condition 1 as fundamental to the contract. In particular, failure to comply with special condition 1.2 and 1.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Customer to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this special condition 1.7 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Supplier's failure to comply with special condition 1.2 or special condition 1.3, as the case may be.
156. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this contract shall not (so far as reasonably practicable) take place without the Customer's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-contractor shall supply to the Customer full particulars of such proposed changes and the Customer shall be afforded reasonable time to consider them.
157. In the six months prior to termination of this contract, the Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Customer's prior written consent.
158. The Supplier shall indemnify and keep indemnified in full the Customer and each and every New Supplier against all Employment Liabilities relating to:

- a. any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or
- b. any trade union or staff association or employee representative,

159. arising from or connected with any failure by the Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of the Transfer Regulations or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
160. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
161. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from special condition 1.2 to special condition 1.11, to the extent necessary to ensure that
162. any New Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the New Supplier by the Supplier or Customer in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
163. Despite special condition 1.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.