

A smiling woman with long dark curly hair is the central figure, sitting at a light-colored wooden desk. A laptop is partially visible on the desk to her right. The background is a soft-focus office setting with a green wall featuring some text and a plant. The main title is framed by red L-shaped brackets on the left and right sides.

# NCG SUPPLIER TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

THESE TERMS AND CONDITIONS WILL TAKE EFFECT FROM 00:01 HOURS ON MONDAY 10 FEBRUARY 2025.

## 1. Interpretation

**1.1** The following definitions and rules of interpretation apply in these Conditions.

### Definitions

<b>Access Law</b>	means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as either may be amended from time to time or any other applicable legislation or codes of practice governing access to information from time to time.
<b>AWR 2010</b>	the Agency Workers Regulations 2010.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Business Hours</b>	the period from 9.00 am to 5.00 pm on any Business Day.
<b>Commencement Date</b>	has the meaning given in clause 2.2.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 19.9.
<b>Contract</b>	the contract between NCG and the Supplier for the supply of Goods or Services or Works or a combination of Goods and/or Services and/or Works in accordance with these Conditions.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be interpreted accordingly.
<b>Deliverables</b>	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services and/or Works in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
<b>Delivery Date</b>	the date specified in the Order.
<b>Delivery Location</b>	the address for delivery of Goods as set out in the Order.
<b>Goods</b>	the goods (or any part of them) set out in the Order.
<b>Goods Specification</b>	any specification for the Goods, including any related plans and drawings, that is agreed in writing by NCG and the Supplier.

<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Losses</b>	liabilities, costs, expenses, damages and losses (including but not limited to any direct losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses).
<b>Mandatory Policies</b>	the NCG policies as made available from time to time by NCG on its website at <a href="https://www.ncgrp.co.uk/guide-to-information/policies-and-procedures/">https://www.ncgrp.co.uk/guide-to-information/policies-and-procedures/</a> .
<b>National Living Wage</b>	the highest rate of National Minimum Wage applicable to workers aged 21 and over.
<b>National Minimum Wage</b>	the minimum hourly rate of pay set by the Government under the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 2015, which applies, with some exceptions to all workers.
<b>NCG</b>	means NCG (including all subsidiaries) a corporation whose main place of business is registered at Rye Hill Campus, Scotswood Road, Newcastle upon Tyne, NE4 7SA.
<b>NCG Materials</b>	has the meaning set out in clause 3.18.10
<b>Order</b>	NCG's order for the supply of Goods and/or Services and/or Works, as set out in NCG's purchase order form.
<b>Packaging</b>	means any type of package including but not limited to bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
<b>Real Living Wage</b>	the UK wage rate based on cost of living paid voluntarily by employers who are accredited with the Living Wage Foundation.

<b>Relevant Terms and Conditions</b>	the relevant terms and conditions for a particular Qualifying Temporary Worker as defined in relation 6 of the AWR 2010.
<b>Services</b>	the services, including any Deliverables and Works, to be provided by the Supplier under the Contract as set out in the Service Specification.
<b>Service Specification</b>	the description or specification for Services agreed by NCG.
<b>Supplier</b>	the person or organisation from whom NCG purchases the Goods or Services or Goods and Services.
<b>Supplier Background IP</b>	the Intellectual Property Rights together with any other materials, artwork, designs, slogans, content or text created by the Supplier for the purpose of providing the Services and the Deliverables.
<b>Temporary Worker</b>	a person introduced and supplied by the Supplier to NCG to provide Services to NCG not as an employee of NCG who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010.
<b>Works</b>	the minor works to be provided by the Supplier under the Contract as set out in the Works Specification.
<b>Works Specification</b>	the description or specification for Works agreed, where possible, in writing by NCG and the Supplier.

## 1.2 Interpretation:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its successors and permitted assigns.
- 1.2.2 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.4 A reference to **writing** or **written** includes correspondence sent by email but excludes fax.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by NCG to purchase Goods or Services or Works or a combination of Goods, Services and/or Works in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
  - 2.2.1 the Supplier issuing written acceptance of the Order; or
  - 2.2.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 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 law, trade custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of Goods, Services and Works except where the application to one or more is specified. Clauses specific to the **supply of Goods** shall be indicated by red boxes, clauses specific to **the supply of Services** shall be indicated by blue boxes and where the supply of Services includes **the supply of Works**, the clauses specific to the supply of Works (which apply to Works in addition to the clauses specific to the supply of Services) shall be indicated by green boxes.
- 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.



### 3. Supply and Delivery of Goods, Services and Works

#### Supply of Goods

- 3.1** The Supplier shall ensure that any Goods shall:
- 3.1.1** correspond with their description and any applicable Goods Specification;
  - 3.1.2** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by NCG, expressly or by implication, and in this respect NCG relies on the Supplier's skill and judgement;
  - 3.1.3** where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - 3.1.4** comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2** The Supplier shall ensure that all personnel employed by the Supplier in connection with the Goods who work 2 or more hours a week for 8 or more consecutive weeks a year, are paid in accordance with the Real Living Wage, which the Supplier understands is distinct from the National Living Wage and National Minimum Wage. For avoidance of doubt, where multiple personnel employed by the Supplier are involved in the supply of the Goods, and the Supplier is unable to attribute the hours each employee undertakes, such as a stationery supplier, the Supplier does not need to pay all personnel employed the Real Living Wage. If at any time, the Supplier is unclear on its obligation under this clause, the Supplier should contact NCG to seek clarification.
- 3.3** 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.
- 3.4** NCG may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.5** If following such inspection or testing NCG considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, NCG shall inform the Supplier, and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.6** NCG may conduct further inspections and tests after the Supplier has carried out its remedial actions.

- 3.7** The Supplier shall ensure that all spare and/or replacement parts, components and materials for the Goods shall be available from the Supplier for a period of 10 years from delivery of the Goods or it shall provide NCG with all drawings, plans, specifications, and other technical data necessary to enable NCG to manufacture such parts for the Goods.
- 3.8** If necessary, and insofar as is applicable, the Supplier shall co-operate with and assist NCG in complying with any obligations imposed on NCG by any Access Law, including but not limited to providing all such information in possession of the Supplier that is necessary to enable NCG to comply with its obligations, which relates to or arises out of the Contract and/or any documentation associated with the Goods or relates to the Supplier.

### Delivery Of Goods

- 3.9** The Supplier shall ensure that:
- 3.9.1** Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 3.9.2** each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the 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;
  - 3.9.3** if the Supplier requires NCG to return any Packaging to the Supplier, that fact is clearly stated prior to the Delivery Date. The Packaging must be clearly marked to show it belongs to the Supplier and shall only be returned to the Supplier at the cost of the Supplier. NCG shall not be liable for any Packaging lost or damaged in transit;
  - 3.9.4** all personnel employed by the Supplier to deliver the Goods who work 2 or more hours a week for 8 or more consecutive weeks a year, are paid in accordance with the Real Living Wage, which the Supplier understands is distinct from the National Living Wage and National Minimum Wage For avoidance of doubt, where multiple personnel employed by the Supplier are involved in the delivery of the Goods, and the Supplier is unable to attribute the hours each employee undertakes, such as a stationery supplier, the Supplier does not need to pay all personnel employed the Real Living Wage. If at any time, the Supplier is unclear on its obligation under this clause, the Supplier should contact NCG to seek clarification; and
  - 3.9.5** it observes all health and safety rules and regulations and any other security requirements, including a DBS check (where applicable) that apply at any of NCG's premises whilst it delivers the Goods.
- 3.10** The Supplier shall deliver the Goods:
- 3.10.1** on the Delivery Date;
  - 3.10.2** at the Delivery Location; and
  - 3.10.3** during Business Hours or as instructed by NCG.

- 3.11** Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 3.12** If the Supplier delivers more or less than the quantity of Goods ordered, NCG may at its sole discretion reject the Goods or, if applicable, the excess Goods. Any rejected Goods | shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and NCG accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 3.13** The Supplier shall not deliver the Goods in instalments without NCG'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 NCG to the remedies set out in clause 4.1.
- 3.14** Title in the Goods shall pass to NCG on the earlier of:
- 3.14.1** payment of the price for the Goods as specified in the Order; or
  - 3.14.2** on completion of delivery (including unloading and full installation where relevant) of the Goods.
- 3.15** Risk in the Goods shall pass to NCG on completion of delivery (including unloading and full installation where relevant).

## Supply of Services

- 3.16** The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to NCG at the NCG premises specified in the Order in accordance with the terms of the Contract.
- 3.17** The Supplier shall meet any performance dates for the Services specified in the Order or that NCG notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 3.18** In providing the Services, the Supplier shall:
- 3.18.1** co-operate with NCG in all matters relating to the Services, and comply with all instructions of NCG;
  - 3.18.2** perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 3.18.3** 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 the Contract;



- 3.18.4** ensure all personnel employed by the Supplier to deliver the Services who work 2 or more hours a week for 8 or more consecutive weeks a year, are paid in accordance with the Real Living Wage, which the Supplier acknowledges and understands is distinct from the National Living Wage and National Minimum Wage;
- 3.18.5** ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that NCG expressly or impliedly makes known to the Supplier;
- 3.18.6** unless agreed otherwise with NCG, provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 3.18.7** 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 NCG, will be free from defects in workmanship, installation and design;
- 3.18.8** obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 3.18.9** observe all health and safety rules and regulations and any other security requirements, including a DBS check (where applicable) that apply at any of NCG's premises;
- 3.18.10** hold all materials, equipment and tools, drawings, specifications and data supplied by NCG to the Supplier (**NCG Materials**) in safe custody at its own risk, maintain the NCG Materials in good condition until returned to NCG, and not dispose of or use the NCG Materials other than in accordance with NCG's written instructions or authorisation; and
- 3.18.11** not do or omit to do anything which may cause NCG to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that NCG may rely or act on the Services.

**3.19** Where the Supplier provides the Services as an individual:

- 3.19.1** the relationship between NCG and the Supplier will be that of independent contractor and nothing in this agreement shall render them an employee, worker, agent or partner of NCG and the Supplier shall not hold themselves out as such;
- 3.19.2** the Supplier shall be fully responsible for and shall indemnify for and in respect of:
  - 3.19.2.1** any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Supplier shall further indemnify NCG against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by NCG in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
  - 3.19.2.2** any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier against NCG arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of NCG.

**3.20** Where the Supplier provides the Services as a company:

- 3.20.1** to the extent that NCG is required to make a determination of the employment status of the personnel/key person(s) (together referred to as the **Personnel**) providing the Services on behalf of the Supplier under the off payroll working rules published in the Finance Act 2018 (**IR35**), NCG shall notify the Supplier of such fact in writing and of its decision under IR35. Where NCG determines that the off payroll working rules apply, the Supplier shall deduct income tax and national insurance contributions from the payments it makes to the Personnel. The Supplier or the Personnel may, within 14 days from the date it receives the determination from NCG, provide NCG with notice that it disagrees with the determination along with its reasons. NCG will then make a final determination within 45 days of receiving such notice. Where it is determined that the Personnel are not deemed an employee under IR35 then the Supplier must ensure that the Personnel is/are required to pay any taxes and national insurance contributions that may be due and owing to HMRC under the applicable legislation and in accordance with this clause 3.20;
- 3.20.2** the Supplier undertakes to, and (where relevant) shall procure that all Personnel shall account to HMRC, bear sole responsibility for the payment of any income tax, national insurance contributions, VAT or other taxes which may be found due from the Supplier, any member of Personnel, in relation to the Services or any payments made under the Contract;
- 3.20.3** the Supplier shall, upon request, promptly provide information or other evidence to NCG which demonstrates that the Supplier and its Personnel have complied with clause 3.20.2;
- 3.20.4** NCG may, upon request, provide HMRC (or any other department or agency of the government) with information (including any information or evidence received from the Supplier under clause 3.20.3) regarding the Services provided and any payments made to the Supplier under the Contract;
- 3.20.5** the Supplier undertakes to indemnify NCG on a continuing basis for the full amount of any tax liability, provided that such liability is not incurred or increased as a result of undue delay or negligence on the part of NCG, and provided the recovery is not prohibited by law;
- 3.20.6** the Supplier shall, on notification by NCG, immediately pay to NCG an amount equal to the tax liability, such sum to be recoverable by NCG as a debt in the event of non-payment by the Supplier. Alternatively, NCG may, at its option, satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Supplier ; and
- 3.20.7** NCG shall give the Supplier reasonable notice of any HMRC demand for any tax liability and allow the Supplier and/or Personnel a reasonable opportunity, at the Supplier's and/or Personnel's own expense, to dispute any tax liability (provided that nothing in this clause 3.20.7 shall prevent NCG from complying with their legal obligations with regard to HMRC or other competent authority).

**3.21** If necessary, and insofar as is applicable, the Supplier shall co-operate with and assist NCG in complying with any obligations imposed on NCG by any Access Law, including but not limited to providing all such information in possession of the Supplier that is necessary to enable NCG to comply with its obligations, which relates to or arises out of the Contract and/ or any documentation associated with the Services.

#### 4. NCG Remedies

- 4.1** If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, NCG shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
- 4.1.1** to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 4.1.2** to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;
  - 4.1.3** to recover from the Supplier any costs incurred by NCG in obtaining substitute goods or services from a third party;
  - 4.1.4** to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided or Goods that it has not delivered; and
  - 4.1.5** to claim damages for any additional costs, loss or expenses incurred by NCG which are in any way attributable to the Supplier's failure to meet such dates.
- 4.2** If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, NCG shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- 4.2.1** to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 4.2.2** 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;
  - 4.2.3** to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 4.2.4** to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 4.2.5** to recover from the Supplier any expenditure incurred by NCG in obtaining substitute goods from a third party; and
  - 4.2.6** to claim damages for any additional costs, loss or expenses incurred by NCG arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 4.3** If the Supplier has supplied Services that do not comply with the requirements of clause 3.18 then, without limiting or affecting other rights or remedies available to it, NCG shall have one or more of the following rights and remedies:
- 4.3.1** to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 4.3.2** to return the Deliverables to the Supplier at the Supplier's own risk and expense;
  - 4.3.3** to require the Supplier to provide repeat performance of the Services, or to provide a credit note, or full refund of the price paid for the Services (if paid);
  - 4.3.4** to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 4.3.5** to recover from the Supplier any expenditure incurred by NCG in obtaining substitute services, works or deliverables from a third party; and
  - 4.3.6** to claim damages for any additional costs, loss or expenses incurred by NCG arising from the Supplier's failure to comply with clause 3.18.

**4.4** These Conditions shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Supplier.

**4.5** NCG's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **5. NCG's obligations**

**5.1** NCG shall:

**5.1.1** provide the Supplier with reasonable access at reasonable times to NCG's premises for the purpose of providing the Goods, Services or Works; and

**5.1.2** provide such necessary information for the provision of the Goods, Services or Works as the Supplier may reasonably request.

## **6. Charges and payment**

**6.1** Charges and payment for the Goods

**6.1.1** The price for the Goods shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date shall apply.

**6.1.2** The price shall be inclusive of the costs of packaging, insurance, carriage, delivery, offloading and installation (if applicable) of the Goods. No extra charges shall be effective unless agreed in writing and signed by NCG.

**6.1.3** The Supplier shall invoice NCG for the price of the Goods on or at any time after delivery of the Goods in accordance with clauses 6.4 to 6.9 inclusive.

**6.2** Charges and payment for the Services

**6.2.1** The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services.

**6.2.2** Unless otherwise agreed in writing by NCG, the charges for the Services shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

**6.2.3** The Supplier shall maintain complete and accurate records up until two years after the Contract has been completed 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

**6.2.4** The Supplier shall invoice NCG on completion of the Services and NCG shall pay the invoice in accordance with clauses 6.4 to 6.9 inclusive.

### 6.3 Charges and payment for the Works

Where and to the extent the Housing Grants, Construction and Regeneration Act 1996 applies to the Services and/or the Works (as appropriate) clause 6.2.4 shall not apply (but for the avoidance of doubt clauses 6.2.1, 6.2.2, and 6.2.3 shall apply to payments made pursuant to this clause) and instead the following clauses shall apply:

- 6.3.1** The Supplier shall submit to NCG an invoice for each instalment of the total cost of the Services and/or Works (as appropriate) commensurate with the Services and/or Works (as appropriate) provided during that period. Invoices shall be submitted to NCG by the Supplier periodically as specified in the Order or if not specified every month after which the Services and/or Works were completed.
- 6.3.2** The Supplier shall in addition to any invoice provide supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date as provided by clause 6.3.3, and the basis on which that sum is calculated.
- 6.3.3** Each payment shall become due on the date NCG receives each invoice (**Due Date**).
- 6.3.4** No later than five days after the Due Date NCG shall notify the Supplier of the sum that NCG considers to have been due at the Due Date and the basis on which that sum is calculated.
- 6.3.5** The final date for payment shall be 30 days after the Due Date (**Final Date for Payment**).
- 6.3.6** Unless NCG has served a notice under clause 6.3.7 it shall pay the Supplier the sum referred to in NCG's notice under clause 6.3.4 (or, if NCG has not served notice under clause 6.3.4 the sum referred to in the Supplier's invoice) (**Notified Sum**) on or before the Final Date for Payment of each invoice.
- 6.3.7** Not less than 2 days before the Final Date for Payment (**Prescribed Period**) NCG may give the Supplier notice that it intends to pay less than the Notified Sum (**Pay-Less Notice**). Any Pay-Less Notice shall specify:
  - 6.3.7.1** the sum that the payer considers to be due on the date the notice is served; and
  - 6.3.7.2** the basis on which that sum is calculated.Where a Pay-Less Notice is given in accordance with this clause 6.3.7, the obligation to pay the Notified Sum in clause 6.3.6 applies only in respect of the sum specified in that Pay-Less Notice.
- 6.3.8** Clauses 6.4, 6.6, 6.7, 6.8, and 6.9 shall apply to all payments made under this clause 6.3.

- 6.4** Each invoice shall be addressed to NCG's main place of business as set out in the Definitions above and shall include such supporting information required by NCG to verify the accuracy of the invoice, including the relevant NCG purchase order number.

- 6.5** Unless agreed otherwise by the parties, in consideration of the supply of Goods and/or Services by the Supplier, NCG 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.

- 6.6** All amounts payable by NCG under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT) but inclusive of all other duties, taxes, customs charges and imposts (where applicable). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to NCG, NCG shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services or Works, as applicable, at the same time as payment is due for the supply of the Goods or Services or Works, as applicable.
- 6.7** NCG has charitable status and some Goods or Services or Works, as applicable, supplied by the Supplier may be subject to a VAT zero rating. Where a VAT zero rating or other VAT relief applies, the Supplier will adjust the invoice accordingly.
- 6.8** If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved on sums found or agreed to be due, from the due date until payment.
- 6.9** NCG may at any time, without notice to the Supplier, set off any liability of the Supplier to the NCG against any liability of NCG to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by NCG of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **7. Agency Workers Regulations**

- 7.1** The Supplier shall and shall ensure that any subcontractor or other intermediary shall at all times comply with their obligations under the AWR 2010, where these apply to the Services, including the Relevant Terms and Conditions in accordance with regulation 5 of the AWR 2010.
- 7.2** The Supplier shall indemnify NCG against all Losses incurred by NCG arising out of a breach or alleged breach by either NCG or the Supplier of the AWR 2010.
- 7.3** If either party receives an allegation that there has been a breach of the AWR 2010 in connection with the Services (whether that allegation has been made as a request for information under regulation 16 of the AWR 2010 or otherwise), it shall provide a copy of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party and complying with any reasonable requests in relation to the contents of any response.



- 7.4** In order to ensure compliance with the AWR 2010, the Supplier will within seven days of receiving a written request from NCG provide it with details of:
- 7.4.1** the number of Temporary Workers that it is currently supplying to NCG;
  - 7.4.2** the parts of NCG's undertaking in which those Temporary Workers are working; and
  - 7.4.3** the type of work those Temporary Workers are carrying out, together with any other information which NCG may reasonably request in relation to any payments made by the Supplier, its subcontractors or any other intermediaries to any Temporary Worker.

## **8. Intellectual Property Rights**

- 8.1** The parties agree that all Intellectual Property Rights existing at the time of the Contract owned by each party shall remain the exclusive property each party respectively.
- 8.2** NCG grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by NCG to the Supplier for the term of the Contract for the purpose of providing the Services to NCG.
- 8.3** The Supplier acknowledges that all rights in the NCG Materials are and shall remain the exclusive property of NCG.
- 8.4** The Supplier hereby assigns to NCG all Intellectual Property Rights in or arising out of the Deliverables and all materials embodying these rights to the fullest extent permitted by law but excluding the Supplier Background IP. Insofar as they do not vest automatically by operation of law or under these Conditions, the Supplier holds legal title in these rights on trust for NCG.
- 8.5** The Supplier grants to the NCG, or shall procure the direct grant to NCG of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Supplier Background IP and/or copy and modify the Deliverables (excluding NCG Materials) for the purpose of receiving and using the Services and the Deliverables.
- 8.6** The Supplier agrees to indemnify NCG against all Losses incurred by NCG, or for which NCG may become liable, with respect to any intellectual property infringement claim or other claim relating to the Deliverables supplied by the Supplier to NCG during the course of providing the Services.
- 8.7** The Supplier waives any moral rights in the Deliverables to which they are now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Deliverables or other materials infringes the Supplier's moral rights.

- 8.8** The Supplier acknowledges that, except as provided by law, no further fees or compensation other than those provided for herein are due or may become due to the Supplier in respect of the performance of their obligations under this clause 8.
- 8.9** The Supplier undertakes, at the expense of the Supplier, at any time either during or after the Contract to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of NCG be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of NCG and to defend NCG against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Deliverables.

## **9. Limitation of Liability**

- 9.1** The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange in accordance with this clause 9.
- 9.2** References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 9.4** Nothing in this Contract limits any liability which cannot legally be limited, including liability for:
- 9.4.1** death or personal injury caused by negligence;
  - 9.4.2** fraud or fraudulent misrepresentation;
  - 9.4.3** breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - 9.4.4** defective products under the Consumer Protection Act 1987.
- 9.5** Nothing in this Contract shall limit any liability under clauses 3.19.2, 3.20.5, 7.6, 9.1 and 12.8.
- 9.6** Subject to clause 9.3 and clause 9.4 NCG's total liability to the Supplier shall not exceed the lesser of:
- 9.6.1** the amount payable to the Supplier by NCG in accordance with the Order in relation to which the cause of action occurred; and
  - 9.6.2** the sum of £10,000.

- 9.7** Subject to clause 9.3 and clause 9.4, except agreed otherwise by NCG, the Supplier's total liability to NCG shall not exceed the greater of:
- 9.7.1** any amount agreed in writing between NCG and the Supplier referring to this clause; and
  - 9.7.2** 300% of the total amount payable to the Supplier by NCG under the Order in relation to which the cause of action occurred.
- 9.8** The following types of losses are wholly excluded:
- 9.8.1** loss of profits;
  - 9.8.2** loss of sales or business;
  - 9.8.3** loss of agreements or contracts;
  - 9.8.4** loss of anticipated savings;
  - 9.8.5** loss of use or corruption of software, data or information;
  - 9.8.6** loss of or damage to goodwill;
  - 9.8.7** indirect or consequential loss;
- 9.9** The Supplier shall be liable to NCG for direct losses, including but not limited to:
- 9.9.1** wasted expenditure;
  - 9.9.2** additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services or Works not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials; and
  - 9.9.3** Losses incurred by NCG arising out of or in connection with any third-party claim against NCG which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of NCG.

## **10. Indemnity**

- 10.1** The Supplier shall indemnify NCG against all Losses suffered or incurred by NCG arising out of or in connection with:
- 10.1.1** any claim made against NCG 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 or Works (excluding the NCG Materials);
  - 10.1.2** any claim made against NCG by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables, to the extent that the defects in the Goods or Deliverables are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

**10.1.3** any claim made against NCG by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services or Works, 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 subcontractors.

**10.2** This clause 10 shall survive termination of the Contract.

## 11. Insurance

During this Contract and for a period of 6 years afterwards, unless agreed otherwise by NCG, the Supplier shall maintain in force the following insurance policies with reputable insurance companies as applicable:

Policy	Goods	Services	Works
Public liability	£5 million	£5 million	£5 million
Product liability	£5 million	£5 million	£5 million
Professional indemnity	£2 million	£2 million	£2 million
Employers' liability	£5 million	£5 million	£5 million

The Supplier shall retain and make available for inspection by NCG copies of all such policies during this Contract and for at least 7 years afterwards.

## 12. Compliance with relevant laws and policies

**12.1** In performing its obligations under the Contract, the Supplier shall:

- 12.1.1** comply with all applicable laws, statutes, regulations and codes from time to time in force
- 12.1.2** comply with the Mandatory Policies; and
- 12.1.3** comply with NCG's Code of Conduct for Suppliers and Contractors.;

**12.2** Where the Contract is of a type to which Cabinet Office Procurement Policy Note 09/23 on Cyber Essentials applies (or any policy direction or recommendation of Cabinet Office which replaces it), the Supplier shall ensure that it holds a relevant Cyber Essentials or Cyber Essentials Plus (or equivalent) certification and shall provide NCG with details thereof on request.

### 13. Data protection

**13.1** The following definitions apply in this clause 13:

**13.1.1 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**13.1.2 Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**13.1.3 Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

**13.1.4 UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**13.2** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

**13.3** The parties acknowledge that for the purposes of the Data Protection Legislation, and unless otherwise agreed, NCG is the Controller, and the Supplier is the Processor.

**13.4** Without prejudice to the generality of clause 13.2, NCG will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of NCG for the duration and purposes of the Contract.

**13.5** Without prejudice to the generality of clause 13.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract where it is acting as a Data Processor:

**13.5.1** process that Personal Data only on the documented written instructions of NCG unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify NCG of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying NCG;

- 13.5.2** ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- 13.5.3** ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 13.5.4** not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - 13.5.4.1** NCG or the Supplier has provided appropriate safeguards in relation to the transfer;
  - 13.5.4.2** the Data Subject has enforceable rights and effective legal remedies;
  - 13.5.4.3** 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; and
  - 13.5.4.4** the Supplier complies with reasonable instructions notified to it in advance by NCG with respect to the processing of the Personal Data;
- 13.5.5** assist NCG in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.5.6** notify NCG without undue delay on becoming aware of a Personal Data Breach (using, any email address designated by NCG for this purpose, where applicable);
- 13.5.7** at the written direction of NCG, delete or return Personal Data and copies thereof to NCG on termination of the Contract unless required by Domestic Law to store the Personal Data;
- 13.5.8** notify NCG of any potential data protection infringements of which it becomes aware, and notify NCG immediately if any of its instructions relating to the processing of the Personal Data would lead to a breach of Data Protection Legislation; and
- 13.5.9** maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by NCG or NCG's designated auditor and immediately inform NCG if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.



- 13.6** The Supplier shall not appoint any third party processor of Personal Data under the Contract without NCG's prior written consent. Where NCG provides such consent, the Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 13 and which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between NCG and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.6.
- 13.7** NCG may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 13.8** The Supplier shall indemnify NCG against all Losses arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

#### 14. Safeguarding

- 14.1** The following definitions apply in this clause 14:
- 14.1.1 Barred List:** the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006;
- 14.1.2 Convictions:** other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement of amendment to that Order);
- 14.1.3 Disclosure and Barring Service:** the bureau established replacing the Criminal Records Bureau, and any successor body from time to time;
- 14.1.4 Pre-assignment Checks:** as a minimum the checks listed below:
- 14.1.4.1** identity check;
  - 14.1.4.2** proof of right to work in the UK;
  - 14.1.4.3** Disclosure and Barring Service check, satisfactory to NCG;
  - 14.1.4.4** certificate of good conduct (where a worker has lived abroad in the previous 5 years);
  - 14.1.4.5** qualifications checked and verified;
  - 14.1.4.6** two references checked and verified;
  - 14.1.4.7** Childcare (Disqualification) Regulations 2018 (where working with children under age 8); and
  - 14.1.4.8** Teaching Regulation Agency Checks where appropriate.

- 14.1.5 Prevent Duty:** the duty to have due regard to the need to prevent people from being drawn into terrorism in accordance with the Counter-Terrorism and Security Act 2015 and any related guidance published by the Government, Ofsted and any other relevant body which are either publicly available or communicated by NCG to the Supplier from time to time including but not limited to “Prevent Duty Guidance for England and Wales” and “Prevent Duty Guidance: for further education institutions in England and Wales” and “Education Inspection Framework”.
- 14.2** The Supplier shall ensure that, unless otherwise expressly agreed by NCG, where any individual will be present on the premises of NCG on behalf of the Supplier (“**Representative**”), then where lawful under the Data Protection Legislation, prior to attending NCG premises for the first time:
- 14.2.1** each Representative is questioned as to whether they have any Convictions; and
  - 14.2.2** the results of a check of the most extensive available kind made with the Disclosure and Barring Service, plus appropriate Barred List checks for roles which involve regulated activity, are obtained in respect of each Representative, which must have been carried out within twelve months of the date the Representative first attends NCG premises; and
  - 14.2.3** the Supplier can provide assurance to NCG that there have been no changes since the Representative’s most recent Disclosure and Barring Service check, including any cautions, convictions, or any other relevant information prior to the first attendance at NCG premises, and at NCG’s request. Such assurance must be refreshed at least annually. For avoidance of doubt, the Supplier must provide the annual assurance by 30 September of each year; and
  - 14.2.4** the results of such questioning and checks as referred to in clauses 14.2.1 to 14.2.3 are provided to NCG in the agreed form and notified to NCG in the case of a positive disclosure.
- 14.3** In exceptional circumstances a Representative may be accepted by NCG without the completion of all Pre-Assignment Checks. In this situation the Representative will be restricted as defined by NCG’s safeguarding risk assessment. The Supplier shall ensure that no person who appears on a Barred List following the results of a Disclosure and Barring Service check shall be presented to NCG as a Representative.
- 14.4** The Supplier shall ensure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is presented to NCG as a Representative without NCG’s written consent.
- 14.5** The Supplier shall ensure that NCG is kept advised at all times of any Representative who receives a Conviction or ASBO or whose previous Convictions or ASBOs become known to the Supplier, or if the Supplier becomes aware of any other information which could present a safeguarding risk to NCG. For the avoidance of doubt, in the event that any Representative is subsequently added to a Barred List, the Supplier shall ensure that such Representative immediately ceases to be engaged by the Supplier in relation to these terms and conditions.

- 14.6** For any Representative with qualified teacher status, the Supplier must have completed all relevant Teacher Regulation Agency (TRA) checks and must not present to NCG any candidate who is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, to provide the Services (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), in respect of any learners under the age of 19 and high needs learners aged 19 to 25 (as if those learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 14.7** The Supplier shall comply with applicable obligations under "Keeping Children Safe in Education" and NCG's Safeguarding Policy, as amended from time to time.
- 14.8** The Supplier at all times must:
- 14.8.1** comply with such procedures as NCG may from time to time require for the reporting, investigation and referring of suspicions, allegations or cases of abuse of children, young persons or adults at risk of harm (each as defined in the SVGA); and
  - 14.8.2** notify NCG immediately in the event that a Prevent referral is made to a Channel panel; and
  - 14.8.3** notify NCG immediately and provide all necessary assistance where a safeguarding referral or concern arises that results in a police investigation being conducted in relation to that safeguarding referral or concern or an allegation of abuse is made against a member of staff; and
  - 14.8.4** liaise with NCG's Designated Safeguarding Lead if the Supplier or the Supplier's designated safeguarding officer has any safeguarding doubt or concern.

## 15. Termination

- 15.1** Without affecting any other right or remedy available to it, NCG may terminate the Contract:
- 15.1.1** with immediate effect by giving written notice to the Supplier if:
    - 15.1.1.1** there is a change of control of the Supplier; or
    - 15.1.1.2** the Supplier commits a breach of clause 12.1.1.
  - 15.1.2** in whole or in part for convenience by giving the Supplier one month's written notice.
- 15.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 15.2.1** the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 15.2.2** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

**15.2.3** the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

**15.2.4** the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

## **16. Consequences of termination**

**16.1** In the event of notice being given to the Supplier in accordance with clause 15.1.2, NCG may at its sole discretion, at any time before expiration of the notice, be entitled to exercise the following rights:

**16.1.1** to direct the Supplier where the Services or Works have not commenced to refrain from commencing;

**16.1.2** to direct the Supplier to complete all or part of the Services or Works in accordance with the Contract, which shall be paid for at the agreed price in the Order, or if part completed, the Supplier shall make a pro rata adjustment.

**16.2** On termination of the Contract, the Supplier shall immediately deliver to NCG all Deliverables whether or not then complete and return all NCG Materials. If the Supplier fails to do so, then NCG may 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 the Contract.

**16.3** Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**16.4** The Supplier shall indemnify NCG and any successor to the Supplier against all Losses arising out of or in connection with any transfer, or deemed or alleged transfer, by operation of law of any of the Supplier's employees or any other staff engaged by it in provision of the Services occurring pursuant to the termination of the Contract.

**16.5** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect including clauses 1, 3, 4, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18 and 19.

## **17. Confidentiality**

**17.1** Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 17.2.

**17.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**17.3** Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **18. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 30 days the party not affected may terminate the Contract by giving 30 day's written notice to the affected party.

## **19. General**

**19.1 Assignment and other dealings.** NCG may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of NCG.

**19.2 Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of NCG. If NCG consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

**19.3 Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received:

**19.3.1** if delivered by hand, at the time the notice is left at the proper address; or

**19.3.2** if sent by pre-paid post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

**19.3.3** if sent by email to a correct email address designated for use by the recipient party for the purpose of communications in connection with the Contract, at the time the email is sent, provided that no undeliverable message is received, and if such time is outside of Business Hours, at 9.00am on the next Business Day after sending.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**19.4 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 19.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 19.5 Waiver.** Except as set out in clause 2.5, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy, and a delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 19.6 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19.7 Entire agreement.** The Contract constitutes the entire agreement between the parties and each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 19.8 Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 19.9 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 19.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 19.11 Jurisdiction.** Each party irrevocably agrees that any proceedings relating to any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract shall subject to the non-exclusive jurisdiction of courts of England and Wales.