

1 Definitions and Interpretation

1.1 In these terms and conditions, the following words shall have the meanings set out below:

Affiliate means for a party, its Subsidiary or Holding Company (each as defined by Companies Act 2006), or a Subsidiary of any such Holding Company;
Applicable Law means, for the time being, any law, statute, regulation, order or sub-ordinate legislation that is in force, any binding court order or judgment, any industry licence or code, any guidance issued by any regulatory body or any industry licence or conditions of any accreditation (including any licences granted under the Water Act 1989 and/or the Water Industry Act 1991);

Business Day means any day other than a Saturday, Sunday or a public or bank holiday in England;

Business Hours means between 09:00 and 17:00 on a Business Day;

Company means United Utilities Water Limited (registration number 02366678), or any alternative entity as is specified as such on the Order;

Company Material means any Material provided by or on behalf of the Company to the Supplier in connection with the performance of the Supplier's obligations under the Contract and in receipt of the Services;

Confidential Information means all confidential or proprietary information including all documents, databases, data, processes, contracts, financial information, plans, ideas, products and designs (however recorded and in whatever form) disclosed or made available, directly or indirectly, by either party to the other;

Contract means the contract constituted by and incorporating these Terms, the Order and the Specification;

Contract Price means the sums payable under the Contract, as specified in the Order;

Controller, Process, Processor, Personal Data, Personal Data Breach and Data Subject have the meanings given under the UK GDPR;

Data Protection Laws means all applicable laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals including, without limitation, the Data Protection Act 1998, the Data Protection Act 2018, the Privacy and Electronic Communication (EC Directive) Regulations 2003, the UK GDPR, and all and any regulations made under those acts or regulations, all applicable formal or informal guidance, rules, requirements, directions, recommendations, codes of practice, policies, measures or publications of the Information Commissioner's Office, other relevant regulator and/or relevant industry body, and the equivalent in any other relevant jurisdictions all as amended or replaced for the time being;

Deliverable means any item to be prepared, written, created or otherwise delivered by the Supplier in the course of (or in contemplation of) performing the Services;

Expiry Date means the date on which the Services are completed, or stop being provided, as specified in the Order;

IPR means all patents, trademarks, service marks, trade names, business names, design rights, rights in and/or to internet domain names, website addresses, copyright, database rights, rights in and to Confidential Information (including know-how and trade secrets) and all other intellectual property rights, whether registered or unregistered subsisting at any time in any part of the world;

Material means any inventions, discoveries, documents, information, items, data, designs, prototypes, drawings, formulation, know-how or other material (in whatever form) including software, firmware, computer programs, documents, methodologies, processes, procedures and records;

New Material means any Material which is generated, created or discovered in the course of the performance of the Services including any Deliverable;
Order means any order for Services placed by the Company including a purchase order or any agreement of which these Terms form part and includes the Specification;

Services means the services to be provided by the Supplier to the Company in accordance with the Terms as defined in the Order;

Service Recipient means the Company and each of its Affiliates;

Site means the place or places at which the Company requires the Services to be provided as agreed between the parties;

Specification means the specification for the Goods set out in, referred to in or appended to the Order;

Start Date means the date on which the Services shall be provided, being the date of the Order unless otherwise specified in the Order;

Supplier means the entity set out in the Order;

Supplier Material means any Material provided by the Supplier in the provision of the Services excluding New Material;

Terms means these terms and conditions;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

UK GDPR means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (as amended under domestic law for the time being).

1.2 A reference to a "person" includes an individual or a business (however it is formed).

1.3 A reference to a piece of legislation (for example, an act of parliament), should be interpreted as a reference to that piece of legislation as amended or re-enacted, and includes all subordinate legislation made under that piece of legislation.

1.4 Any words following the terms "including", "include", "in particular", "for example" or any similar expression, should be construed as illustrative and shall not limit the description, definition or words which follow.

1.5 Nothing in any Order varies these Terms unless it specifically references the particular clause number which the parties wish to vary.

2 Contract Formation

2.1 The Order is made on the basis that the Terms apply to the exclusion of all other terms and conditions. Should the Supplier not wish to be bound by the Terms, the Supplier must reject the Order. The Contract is formed when the Supplier accepts the Order (whether by written acceptance or signature) or otherwise does any act consistent with fulfilling the Order. These Terms and the Order shall apply to the exclusion of all other terms that the Supplier may seek to impose (including as may be provided for in any documents delivered by the Supplier) and the Supplier waives its right to rely upon all such terms.

3 Start and Duration

The Contract shall start on the Start Date and shall continue in full force and effect up to and including the Expiry Date unless terminated earlier in accordance with clause 11.

4 Supplier's Obligations

4.1 The Supplier shall:

- (a) diligently provide the Services and any Deliverables to the Service Recipients in accordance with the Contract, all Applicable Laws, and any deadlines specified in the Contract, using suitably qualified personnel, and to the standard expected of a supplier of equivalent services to a customer of the same size and nature as the Company;
- (b) comply with the reasonable directions of the Company in connection with the Services and all applicable internal policies and procedures of the Company made known to the Supplier;
- (c) obtain and maintain (at its own expense) all licences, permissions, permits, authority and consents necessary to perform the Contract; and
- (d) be deemed to have allowed in the Contract Price for any liability which may accrue under TUPE, as a result of the Contract.

5 Payment

5.1 The Supplier may only invoice the Company within the 3 months after completion of the Services, or in accordance with any alternative payment schedule set out in the Order. The Company shall pay any valid invoice within 30 days of the end of the month in which the invoice is received.

5.2 The Company shall pay the Contract Price by electronic transfer to the bank account detailed on the invoice or, if payments cannot be made and/or received by electronic transfer, the Company may pay by cheque made out to the Supplier and sent to such address as the Supplier directs.

5.3 If the Company is late in paying, the Supplier shall be entitled to charge interest on any overdue amount, calculated day to day at a rate per year equal to 2% above the base rate of NatWest Bank plc and payable from the date on which payment was due up to and including the date of payment. Each party agrees that such rate is reasonable.

5.4 Unless otherwise expressly stated, all prices are exclusive of VAT chargeable from time to time.

5.5 The Company may withhold payment of sums due to the Supplier where it has reasonable grounds for doing so, including where the amount invoiced is disputed, and any non-payment arising from any such withholding shall not be regarded as a breach by the Company of the Contract.

5.6 The Company can set-off any amount owed by the Supplier to the Company against any liability owed to the Supplier under or in connection with the Contract (whether present, future, actual or contingent).

6 Audit

The Supplier shall maintain (and retain for at least 6 years following performance of its obligations) and make available to the Company reasonable records (i) supporting the calculation of the Contract Price; and (ii) pertaining to the performance of its obligations under the Contract.

7 IPR

7.1 All IPR in Supplier Material shall be owned by the Supplier. All IPR in Company Material shall be owned by the Company.

7.2 The Supplier assigns (and shall procure that all of its employees, agents and contractors each assign) with full title guarantee to the Company by way of present assignment of existing and all future rights, all IPR in any New Material from creation of the same.

7.3 The Supplier grants the Company and the Service Recipients a non-exclusive, royalty-free, perpetual, irrevocable, worldwide licence (with the right to grant sub-licences) to use and exploit any Supplier Material: (i) to receive and/or benefit from the Services and Deliverables, and (ii) otherwise as necessary to use and exploit all New Material in the Company's business and for any purposes for which the Services were commissioned.

7.4 To the extent required to fulfil the Contract, the Company grants the Supplier a non-exclusive, royalty free, non-transferable licence to use any Company Material and New Material for the duration of the Services.

7.5 The Supplier acknowledges that it will not use any third party's IPR in the provision of the Services without all necessary third party consents, licences and assignments to enable the Supplier to provide the Services and Deliverables and the Company and Service Recipients to receive and use the Services and Deliverables.

7.6 The Supplier shall indemnify fully the Company against all losses (whether direct, indirect or consequential), and all damages, costs and expenses incurred by the Company in connection with any claim made against the Company by a third party alleging breach of their IPR arising from the Company's receipt of the Services and/or use of any Deliverables as contemplated by the Contract.

8 Data Protection

8.1 For the purposes of this Contract, the parties acknowledge that the Company shall be Controller and the Supplier shall be Processor to the extent that Personal Data is Processed in connection with this Contract.

8.2 In respect of any Processing of Personal Data that the Supplier undertakes for and on behalf of the Company in accordance with these Terms, the Supplier shall:

(a) Process such Personal Data only:

- (i) in accordance with these Terms and the express instructions of the Company from time to time (or as otherwise agreed between the parties in a data processing register) unless the Supplier is required by UK domestic law to otherwise process that Personal Data. Where the Supplier is relying on UK domestic law as the basis for processing Personal Data, the Supplier shall promptly notify the Company of this before performing the processing required by Applicable Law unless Applicable Law prohibits the Supplier from notifying the Company; and
- (ii) in accordance with all Data Protection Laws.

(b) taking into account the nature of the Processing, implement appropriate technical and organisational measures to protect such Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

(c) not otherwise modify, amend, remove or alter the contents of such Personal Data or disclose or permit the disclosure of any of such Personal Data to any third party without the prior written authorisation of the Company;

(d) maintain up to date records of its Processing activities performed on behalf of the Company, including, but not limited to, information on cross border data transfers and a general description of security measures implemented in respect of such Personal Data and Processing;

(e) assist the Company in its compliance with its obligations under Data Protection Laws including, but not limited to, in respect of notifying Personal Data Breaches to the Information Commissioner's Office (ICO) and affected Data Subjects;

(f) ensure that only those Supplier personnel (including the Supplier's employees, contractors, agents, subcontractors and sub-processors) who need to have access to the Personal Data are granted access to such Personal Data (and only for the purposes of the performance of this Contract) and that all such personnel required to access the Personal Data are reliable and have been informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 8;

(g) not appoint a sub-processor without the prior written consent of the Company, not to be unreasonably withheld, and ensure an agreement is entered into with the relevant sub-processor which includes provisions no less onerous than those set out in this clause 8 in relation to the Processing obligations of the Supplier;

(h) not transfer Personal Data to a country or territory outside the United Kingdom except with the prior written consent of the Company save that Personal Data may be transferred to the European Economic Area or Gibraltar without such consent unless and until the adequacy decision made under the UK GDPR is repealed or revoked in relation to such countries or territories (as applicable);

(i) notify the Company (using the email address specified by the Company for such purpose from time to time) immediately and in any event within 24 hours if the Supplier in relation to the Contract, Services or Deliverables: (i) receives any request from a Data Subject to access Personal Data of such Data Subject; (ii) receives any complaint or request relating to the Data Protection Laws; (iii) receives any correspondence from the ICO; and/or (iv) becomes aware of any Personal Data Breach, breach of Data Protection Laws, or breach of this clause 8 by the Supplier or its sub-processor(s);

(j) unless otherwise required by Data Protection Laws, the Supplier shall return or delete, at the Company's sole discretion, all such Personal Data upon the termination of the Processing activities carried out under this Contract, and promptly provide the Company with a confirmation in writing that it has done so; and

(k) permit without charge, on an annual basis, and / or if the Company becomes aware of a data breach or alleged breach of the Data Protection Laws by the Supplier, reasonable access by the Company to all records, files, tapes, computer systems and any other information howsoever held by the Supplier in respect of the Supplier's activities pursuant to the Contract for the purposes of reviewing compliance with this clause and / or the Data Protection Laws.

8.3 The Supplier shall indemnify, defend and hold harmless the Company and the Company's directors, officers, agents, successors and assigns from any and all losses arising from or in connection with any Personal Data Breach and/or any breach by the Supplier of the obligations set out in clause 8.2 above.

8.4 The provisions of this clause 8 above will survive termination or expiry of this Contract.

9 Confidentiality

9.1 Each party (**Receiving Party**) shall not, and shall procure that its employees, agents and sub-contractors shall not, at any time disclose to any person any Confidential Information of the other party (**Disclosing Party**) obtained prior to or during the provision of Services, except in accordance with clause 9.2. Information relating to the Company or its Affiliates which is generated by the Supplier shall be Confidential Information of the Company.

9.2 The Receiving Party may disclose Confidential Information of the Disclosing Party:(a) to those employees, agents and sub-contractors who need to know such information in order for the Receiving Party to comply with its obligations under the Contract;(b) if the Receiving Party is required to by law, a court of competent jurisdiction or any government or regulatory authority (including Ofwat), provided that the Receiving Party gives notice of this to the Disclosing Party prior to such disclosure.

9.3 On expiry or termination of the Contract, each Receiving Party shall, on request, promptly return to the Disclosing Party or destroy at the Receiving Party's own cost, all Confidential Information it has received from the Disclosing Party.

10 Liability

10.1 Nothing in the Contract shall limit or exclude either party's liability for:

- (a) death or personal injury caused by that party's negligence, or the negligence of its employees, agents or sub-contractors;
- (b) fraud or fraudulent misrepresentation;
- (c) any liability which cannot be limited or excluded by Applicable Law.

10.2 Subject to clause 10.1, the Company's total liability to the Supplier whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be subject to any limitation on liability specified in the Order, or if none is specified, to 50% of the Contract Price. Such limit on liability shall not apply to the Company's obligation to pay the Contract Price to the extent due and payable by the Company pursuant to these Terms.

10.3 The Supplier shall indemnify the Company against all losses, liabilities, costs and expenses (including, without limitation, in relation to allegations of unfair dismissal, discrimination or other wrongful treatment) howsoever and whenever arising under or in connection with TUPE in respect of any person engaged in connection with the Services (including, without limitation, on or after the expiry or termination of the Services in whole or in part).

11 Termination

11.1 In addition to any other right available to the Company (either under the Contract or generally at law), the Company may terminate the Contract:

- (a) at any time on 30 days' written notice to the Supplier; or

(b) immediately on notice upon:

- (i) the Supplier convening a meeting of its creditors or a proposal being made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal being made for a composition, scheme or arrangement with (or assignment for the benefit of) the Supplier's creditors or where the Supplier is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or a similar officer is appointed (or notice of intention to appoint such an officer or administrator is made) in respect of all or a part of the Supplier's business or assets, or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Supplier's business or for the making of any administrative order; and/or
- (ii) an event occurring or action taking place equivalent to any specified in clause 11.1(b)(i) in any jurisdiction; and/or
- (iii) the Supplier suspending or ceasing, or threatening to suspend or cease, the carrying on of all or a significant part of the Supplier's business; and/or
- (iv) the Company having reasonable grounds to doubt the solvency or credit-worthiness of the Supplier.

11.2 Either party may terminate the Contract immediately on notice where the other party is in material breach of the Contract and such a breach is either: (a) not capable of remedy; or (b) (where such a breach is capable of remedy) not remedied by the breaching party within 10 Business Days following written notice from the other party.

12 Consequences of Termination

12.1 Following expiry or termination of the Contract, the Supplier shall return all Company Material and New Material to the Company and support the smooth transition of the Services.

12.2 Termination or expiry of the Contract shall not prejudice any rights, powers or remedies of either party which have accrued up to the date of termination or expiry, and any provision that expressly or by implication is intended to come into or continue in force shall remain in full force and effect.

12.3 No cancellation charge or other compensation will be due to the Supplier following termination by the Company in accordance with clause 10 above.

13 Assignment, Transfer and Sub-contracting

13.1 The Supplier shall not assign, transfer, or sub-contract, any of its rights or obligations under the Contract (in whole or in part) without the prior written consent of the Company, which shall not be unreasonably withheld.

13.2 If the Supplier sub-contracts any part of the Services, then the Supplier shall not be relieved from any liability or obligation whatsoever under the Contract, and the Supplier shall be fully responsible for the acts, omissions and defaults of any sub-contractor (and its employees) as if they were the acts, omissions or defaults of the Supplier.

13.3 The Company may assign the benefit of the Contract in whole or in part to any third party on notice to the Supplier.

14 Notices

14.1 All notices to be given to a party under the Contract shall be in writing in English and addressed to the Company Secretary of that party at its registered office address, or to such other person at such other address as may be specified in the Order for such purpose. Either party may change those details by notice to the other in accordance with this clause 14.

14.2 A notice shall be treated as having been received (a) if delivered by hand, at the time it is delivered (but if delivered outside of Business Hours, at 09:00 on the next Business Day); (b) if sent by first class post, at 09:00 on the day after posting (but if sent on a non-Business Day, at 09:00 on the third Business Day after posting).

14.3 Notice may not be given by fax or email.

15 Force Majeure

15.1 Neither party shall be liable to the other for any failure or delay in performing its obligations under the Contract where such a failure or delay arises as a result of events, circumstances or causes beyond its reasonable control excluding strikes, lockouts or other industrial disputes relating to the relevant party's employees or sub-contractors' employees (**Force Majeure Event**).

15.2 If either party is unable to perform its obligations under the Contract as a result of a Force Majeure Event, it shall provide notice of this to the other immediately.

15.3 Where such a Force Majeure Event delays the provision of the Services for more than 14 days (or any shorter period stated in the Order), the Company is permitted to terminate the Contract immediately on written notice.

16 Bribery, Corruption, Modern Slavery and Tax

16.1 The Supplier warrants, represents and undertakes that no offence under the Bribery Act 2010 (**Bribery Act**) or the Economic Crime and Corporate Transparency Act 2023 (**Economic Crime Act**) has been or will be committed by the Supplier (or any associated person of the Supplier, as defined in the Bribery Act or the Economic Crime Act, as appropriate) in connection with the procurement or implementation of this Contract.

16.2 If at any time the Supplier:

- (a) becomes aware of or suspects any breach of clause 16.1; or
 - (b) becomes the subject of any investigation in connection with the Bribery Act, the Economic Crime Act or any other genuine and substantiated allegation or complaint is made against it in respect of any bribery, fraud, coercion, collusion, money laundering, terrorist financing or other corruption related offence or it becomes subject to any equivalent investigation to any of the foregoing,
- the Supplier (unless prohibited by law) shall promptly notify the Company in writing of such matters within its knowledge, or of such grounds for suspicion, and shall co-operate with the Company in respect thereof.

16.3 The Supplier shall:

- (a) comply with all Applicable Laws relating to modern slavery (including the Modern Slavery Act 2015), employment and tax (including by ensuring that all income tax, national insurance and other employment taxes and levies are applied and accounted for in full for each individual involved in the provision of the Services) (the **Relevant Compliance Requirements**);
- (b) not do or omit to do any act or thing which causes or may cause the Supplier, the Company or any of its Affiliates to be in breach of and/or to commit an offence under any Relevant Compliance Requirements; and
- (c) ensure that it is UK tax resident or has a tax presence in the UK and complies with IR35, and that no individuals are engaged in the Services via an intermediary for the purposes of IR35 (IR35 being the intermediaries legislation known as IR35 concerning off payroll working set out in Chapters 8 and 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000 (in each case as may be amended from time to time) and any other legislation or secondary legislation which imposes a liability to pay or deals with the payment to HMRC of any employment taxes in connection with services provided by workers via Intermediaries);

(d) notify the Company as soon as reasonably practicable of any breach of this clause.

16.4 If any amount paid or due to the Company under the Contract is liable to taxation, the Supplier shall pay the Company such further sum as ensures that the net amount received and retained by the Company equals the full amount which would have been received and retained by it but for that tax liability.

16.5 The Supplier shall account to HMRC for any VAT payable on sums due under the Contract (and where relevant, the Company is an "end user" for the purposes of Section 55A of the VAT Act 1994, the Domestic Reverse Charge for Construction).

16.6 Breach of this clause 16 is a material breach by the Supplier which is not capable of remedy.

16.7 This clause 16 shall survive the expiry or termination (for any reason) of this Contract.

17 Variation

No variation of the Contract shall be valid or effective unless it is agreed in writing, signed by the parties.

18 Third Party Rights

18.1 Save for the exception at clauses 18.2 and 18.3, the Contract does not give any third party a right or remedy enforceable under the Contracts (Rights of Third Parties) Act 1999.

18.2 Each Service Recipient may benefit from and enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999, however the parties may rescind, amend, terminate or vary the Contract without the Service Recipients' consent.

18.3 The parties agree that the Company may, acting as agent on behalf of any Service Recipient or collectively with any number of Service Recipients, enforce any provision of the Contract and recover any losses suffered by any Service Recipient(s) in connection with any breach of such provision by the Supplier.

19 Governing Law and Jurisdiction

The Contract shall be governed by the laws of England and Wales and the parties agree that the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising out of or in connection with the Contract.

20 General

20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal or enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

20.2 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.3 The Contract shall not create an agency or a partnership between the Company and the Supplier.

20.4 The Contract constitutes the entire agreement between the Supplier and the Company and each of them agrees that it does not rely on any statement, representation or assurance (whether innocent or negligent) that is not set out in the Contract.