

## UKILN Terms & Conditions of Purchase

### Section A: INTERPRETATION

In these Conditions the following words shall have the following meanings

UKILN	means the United Kingdom & Ireland Lakes Network (UKILN), c/o Dockyard, Broads Authority, Griffin Lane, Thorpe St Andrew, Norwich, NR7 0SL
Charges	means the charges for the Services or Goods as stated in an Order;
Conditions	means the standard terms & conditions of purchase set out in this document and (unless the context otherwise requires) includes any special conditions agreed in writing between UKILN and the Supplier;
Contractor	means the person, firm or Charity who accepts UKILN's order for the provision of Services;
Data Protection Law	means all applicable data protection and privacy legislation in the UK protecting the fundamental rights and freedoms of individuals in relation to their personal data and right to privacy including without limitation the UK GDPR, the Data Protection Act 2018 (including the UK Adequacy Regulations pursuant to Section 17A of the Data Protection Act 2018 and all other regulations made thereunder) as amended and all other legislation or regulatory requirements in force from time to time and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and which are applicable;
UK GDPR	means the UK General Data Protection Regulation. The terms "personal data", "data subject", "processor", "controller", "processing", "personal data breach" and "supervisory authority" have the meanings set out in Article 4 of the UK GDPR;
Goods	means the items or products (if any), including any of them or part of them and including their packaging, described in the Order to be supplied to UKILN;
Intellectual Property Rights	means patents, trade-marks, service marks, trade names, design rights (whether registered or unregistered), copyright and related rights, proprietary information rights including rights in computer software and websites, database rights, trade secrets and unpatented know-how and confidential information and all other rights of a similar nature including all applications, extensions and renewals in relation to any of these rights as may exist anywhere in the world;
Order	means UKILN's authorised purchase order form, which includes a description of the Services or Goods (as applicable), the Charges and any terms applying to the provision of Services or the supply of Goods which are additional to these Conditions;
Personnel	means any director, officer, employee, agent or supplier of the Contractor or Supplier and includes the employees of any

Regulations	subcontractor or supplier of the Contractor or Supplier, in each case, involved in the provision of the Services or supply of the Goods; means all UK legislation, regulations, codes of practice, guidance or other requirements of any relevant government, governmental or regulatory agency, or other relevant body applicable to the provision of the Services or to the Goods and/or to the supply of the Goods;
Services	means the services (if any) described in the Order to be provided to UKILN;
Service Levels	means the service levels describing the standards to which the Services are to be performed set out, or otherwise referred to, in the Order (if any);
Specification	means any specification, standards, data, plans, drawings, models or other information relating to the Services or Goods;
Subsidiary	has the meaning given to it in s.1159 and Schedule 6 of the Companies Act 2006;
Supplier	means the person, firm or Charity who accepts UKILN's Order for the supply of Goods;
Writing	includes facsimile transmissions, electronic communication and comparable means of communication.

## **1 FORMATION AND INCORPORATION**

1.1 These Conditions shall comprise of three sections, Section A shall apply to all Orders, whether for Services or Goods, Section B, together with Section A, shall apply to the provision of Services by a Contractor. Where a reference to 'Contractor or Supplier' or 'Goods or Services' is contained within any Condition under Section A, that Condition should be construed accordingly with respect to the specific Order.

1.2 Any Order placed by UKILN for the provision of Services or the purchase of Goods is subject to these Conditions. No other terms and/or conditions (including any terms or conditions written on or attached to any quotation, acknowledgment of acceptance of order, specification, sales invoice, delivery note, form, document or correspondence) sought to be imposed by the Contractor or Supplier will form part of the Agreement. No conduct of UKILN shall constitute acceptance of any such other terms and conditions and the Contractor or Supplier waives any right which it otherwise might have had to rely on such terms and conditions.

1.3 Each Order by UKILN for the provision of Services from the Contractor or the supply of Goods from the Supplier shall be deemed to be an offer by UKILN to acquire the Services or purchase the Goods subject to these Conditions in accordance with Condition 1.5.

1.4 Any variation to the Order or these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of UKILN and any variation in price, quantity, delivery or other terms or conditions agreed orally shall be confirmed in writing by UKILN and the Contractor or Supplier within 7 days from the date of such agreement, otherwise such variation shall not be binding on either party.

1.5 The Contractor or Supplier shall accept the Order by expressly giving notice in writing of its acceptance. If the Contractor or Supplier has not notified UKILN of its acceptance or rejection of the Order within 14 (overseas orders 21) days of the date thereof, or if the

Contractor starts to provide the Services or the Supplier supplies or commences the supply of the Goods contained in the Order it shall be deemed to have accepted the Order.

1.6 In the event of any conflict between a Condition of these Conditions and the terms of an Order, the terms of the Order shall prevail to the extent required to resolve such conflict.

## **2 DOCUMENTATION**

2.1 The Contractor or Supplier shall quote, as applicable, UKILN's official Purchase Order Number on all invoices, advice notes, delivery notes, packing notes, bills of lading, certificates of insurance and other documents and shall cross reference these documents to each other.

## **3 SUPPLY OF GOODS AND SERVICES**

3.1 In consideration of the Charges, the Contractor or Supplier shall provide the Services or Goods specified in each Order to UKILN in accordance with the provisions of this Agreement.

3.2 UKILN reserves the right to refuse payment for any Services or Goods not included on an Order or which are not in accordance with the Conditions of this Agreement.

3.3 The Contractor or Supplier shall provide the Services or the Goods:

3.3.1 with that degree of diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a type of undertaking similar to that of the Contractor or Supplier; and

3.3.2 in such a manner as to minimise disruption to the business of UKILN.

3.4 The Contractor or Supplier shall comply with all Regulations in its provision of the Services or the supply of the Goods.

3.5 UKILN may, during the Agreement period, request that additional items or services, similar and relevant to this Contract be added to the Agreement.

3.6 In light of Condition 3.5, the Contractor or Supplier shall be afforded the opportunity to quote for such items or services, however, UKILN reserves the right to source the services or products from an alternative Contractor or Supplier should UKILN deem the prices quoted by the Contractor or Supplier to be uncompetitive.

## **4 PRICES AND PAYMENT**

4.1 The Charges payable for the Services or the Goods shall be that stated in the Order and unless otherwise stated shall be:

4.1.1 inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, unloading, carriage insurance and delivery of the Goods to the delivery address and any duties, imports, levies or taxes other than value added tax; and

4.1.2 fixed for the duration of the Agreement.

4.2 No variation in the Charges nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of UKILN.

4.3 The Contractor or Supplier shall be required to provide a minimum of 1 month's written notice of any proposed increase in price. Any such proposed increases shall have no effect until accepted by UKILN in writing.

4.4 The Contractor or Supplier shall pass onto UKILN the benefit of lower prices as a consequence of any decrease in costs.

4.5 The Contractor or Supplier shall be entitled to invoice UKILN on or at any time after delivery of the Services or Goods and shall attach a copy of the relevant Order to each invoice which it issues under this Agreement. September 2023

4.6 UKILN shall pay the Charges in the currency stipulated in the Order no later than 30 days after the Contractor or Supplier provides a valid VAT invoice, unless different payment terms have been agreed in writing by UKILN.

4.7 Following receipt of any invoice, if UKILN notifies the Contractor or Supplier of a bona fide dispute concerning the Charges payable under such invoice, then UKILN shall pay any undisputed amount but shall be entitled to withhold the amount in dispute pending resolution of that dispute. For the avoidance of doubt, the Contractor's obligation to provide the Services or the Supplier's obligations to provide the Goods shall in no way be affected by any dispute in relation to the Charges or payment of them.

4.8 Without prejudice to any other right or remedy, UKILN reserves the right to set off any amount owing at any time from the Contractor or Supplier to UKILN against any sums payable by UKILN to the Contractor or Supplier under the Agreement however arising and whether any such liability is present or future, liquidated or unliquidated.

4.9 If UKILN fails to make payment in accordance with this Condition 4 and the relevant Order, the Contractor or Supplier shall be entitled to charge interest on the overdue amount at a rate of 2% above the base rate of Barclays Bank plc from time to time in force from the date on which such amount fell due until payment.

## **5 DELIVERY AND ACCEPTANCE**

5.1 The Services shall be performed at and the Goods shall be delivered to UKILN's place of business, or some other place of delivery as notified by UKILN in writing, during UKILN's normal office hours.

5.2 The Services shall be performed or the Goods shall be delivered on the date or within the period specified in the Order or if no such period is specified then within 28 days of the Order, unless UKILN notifies the Contractor or Supplier of a change in the required delivery date (giving the Contractor or Supplier as much notice of the revised delivery date as practicable) in which case the Contractor shall perform the Services or the Supplier shall deliver the Goods on or by the revised delivery date. Time for the performance of the Services or the delivery of the Goods shall be of the essence of the Agreement.

5.3 If the Services are not performed or the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, UKILN reserves the right to:

5.3.1 terminate the Agreement in whole or in part without being liable to compensate the Contractor or Supplier for any losses arising as a result of such cancellation or to make any payment to the Contractor other than in respect of Services actually rendered or to the Supplier other than in respect of Goods actually delivered to UKILN prior to the date of such termination;

5.3.2 refuse to accept any subsequent provision of the Services which the Contractor attempts to make or delivery of the Goods which the Supplier attempts to make;

5.3.3 recover from the Contractor or Supplier repayment of any Charges paid in advance in respect of the Services or Goods or any expenditure reasonably incurred by UKILN in obtaining the Services or Goods in substitution from another contractor or supplier; and

5.3.4 claim damages for any reasonable additional costs, loss or expenses incurred by UKILN which are in any way attributable to the Contractors failure to provide the Services or the Supplier's failure to deliver the Goods on the due date.

## **6 WARRANTIES AND INDEMNITY**

6.1 The Contractor or Supplier shall indemnify and keep indemnified UKILN in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by UKILN as a result of or in connection with:

6.1.1 any breach by the Contractor or Supplier of this Agreement;

6.1.2 any act or omission of the Contractor or Supplier or of any of its employees, agents or contractors;

6.1.3 any personal injury to, or death of, any person caused by, relating to or arising from the Services or Goods;

6.1.4 any liability under the Consumer Protection Act 1987 or any other relevant legislation in respect of the Services or Goods;

6.1.5 any claim made against UKILN in respect of any liability, loss, damage, cost or expense sustained by UKILN's employees or agents, by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Services or Goods.

6.1.6 The provisions of this Condition 6.1 shall survive termination or expiry of the Agreement, howsoever arising.

6.2 The Contractor or Supplier shall, at its own expense, adequately insure against its liability arising out of the provisions of this Condition 6 and shall upon request produce to UKILN written evidence of such cover and that premiums due have been paid.

6.3 Unless otherwise agreed in writing between the Contractor or Supplier and UKILN, the Contractor or Supplier shall maintain for the duration of the Agreement Professional Indemnity insurance with a minimum liability of £2million per claim, Product Liability insurance with a minimum liability of £2million per claim and Public Liability insurance with a minimum liability of £5 million per claim. This Condition 6.3 stipulates a minimum base level of insurance and the Contractor or Supplier should ensure, as stated in Condition 6.2 that they have adequate insurance to cover the liabilities outlined in Condition 6.1.

## **7 CONFIDENTIALITY**

7.1 The Contractor or Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Contractor or Supplier by UKILN or its agents and any other confidential information concerning UKILN's business or its products which the Contractor or Supplier may obtain. The Contractor or Supplier shall not use such confidential information for any purpose other than fulfilling its obligations under this Agreement and shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Contractor's or Supplier's obligations to UKILN and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Contractor or Supplier.

7.2 Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any

other person information relating to the existence or details of the Agreement or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

7.3 The provisions of confidentiality shall not apply to any information which:

7.3.1 is in or enters the public domain otherwise than by breach of this Agreement;

7.3.2 was demonstrably in the possession of the Contractor or Supplier prior to disclosure by UKILN;

7.3.3 is otherwise obtained by the Contractor or Supplier from a third party who is free to disclose the same; or

7.3.4 is required to be disclosed by law or regulatory authority.

7.4 The Contractor or Supplier agrees that all confidential information disclosed must be strictly safeguarded and protected from unauthorised use or disclosure. Without prejudice to any other rights or remedy UKILN may have, the Contractor or Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this Condition 7. Accordingly, UKILN shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Condition 7. The obligations relating to confidentiality shall continue notwithstanding termination of the Agreement.

## **8 WORK ON UKILN'S PREMISES**

8.1 The Contractor or Supplier and its employees, agents and sub-contractors shall at all times whilst on UKILN's premises (and in particular for the Contractor whilst accessing UKILN's information technology systems):

8.1.1 comply with any rules or regulations issued by UKILN and obey any reasonable instructions of UKILN or its employees; and

8.1.2 shall in any event at all times comply with the provisions of all Regulations relating to health and safety and environment.

## **9 DATA PROTECTION**

9.1 Whenever the Contractor or Supplier processes personal data on UKILN's behalf:

9.1.1 UKILN shall be the controller and the Contractor or Supplier shall be the processor in respect of such personal data; and

9.1.2 The Contractor or Supplier shall only process as much personal data as is necessary; in accordance with the documented instructions of UKILN and in full compliance with this Agreement and any obligations imposed on the Contractor or Supplier by applicable Data Protection Law.

9.2 The Contractor or Supplier shall take all appropriate technical and organisational measures to ensure the security of data processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

9.3 The Contractor or Supplier must ensure that all persons (including employees) with access to personal data processed on behalf of UKILN are made aware of their data protection, security and confidentiality obligations and do not process such personal data except in accordance with UKILN's instructions.

9.4 The Contractor or Supplier may not engage another processor without UKILN's prior specific or general written authorisation. In the case of general written authorisation, the Contractor or Supplier must inform UKILN of any intended changes concerning the addition

or replacement of other processors and allow UKILN reasonable opportunity to object to such changes. The Contractor or Supplier may not use a processor which UKILN has objected to.

9.5 If the Contractor or Supplier engages another processor to carry out specific processing activities on behalf of UKILN, the Contractor or Supplier must ensure that the other processor:

9.5.1 only does so on the same terms imposed under these Conditions; and

9.5.2 provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the UK GDPR (including the requirements relating to security, integrity and confidentiality); and where that other processor fails to fulfil its data protection obligations, the Contractor or Supplier shall remain fully liable to UKILN for the performance of those obligations.

9.6 UKILN or Supplier shall not share, sell or disclose personal data to any third party. The Contractor or Supplier must not transfer personal data to a country or international organisation outside the UK or European Economic Area unless UKILN has consented in writing to the transfer.

9.7 The Contractor or Supplier shall maintain a written record (which they must make available to the supervisory authority on request) of all categories of processing activities carried out on behalf of UKILN.

9.8 After the completion of the processing on behalf of UKILN, the Contractor or Supplier must (at UKILN's choice) return or delete all personal data and any copies of such personal data processed on its behalf. The Contractor or Supplier may retain any copies of such personal data as is necessary where subject to a statutory or regulatory requirement.

9.9 In the event a data subject makes a request relating to the exercise of his or her legal rights in relation to personal data, or the Contractor or Supplier becomes aware of a personal data breach, the Contractor or Supplier shall notify UKILN immediately via email [info@ukandirelandlakes.org]. The Contractor or Supplier shall cooperate with UKILN and provide such assistance to UKILN as is reasonably required in order to respond to such data request and/or resolve any data breach. September 2023

9.10 Information and assistance provided under this Agreement must be given by the Contractor or Supplier without undue delay and in such time as UKILN reasonably requires in order for it to comply with its obligations under Data Protection Law.

9.11 In the event of a breach of Data Protection Law which results in damage to data subjects, unless the Contractor or Supplier is not responsible for the event which led to the damage, the Contractor or Supplier will be liable for such damage and must ensure the data subject is effectively compensated.

9.12 To the extent that the Contractor is providing any Services which involves the processing, transmission or storing of any credit or debit card payments and/or cardholder information on behalf of UKILN, it is agreed that:

9.12.1 the Contractor shall be fully responsible for the security of cardholder data that it possesses, including all functions relating to storing, processing and transmitting of the cardholder data;

9.12.2 the Contractor affirms that it has complied with all applicable requirements to be considered PCI DSS compliant and has performed the necessary steps to validate its compliance with the PCI DSS;

9.12.3 the Contractor agrees to supply the current status of the Contractor's PCI DSS compliance status and evidence of its most recent validation of compliance upon execution

of these terms and conditions to UKILN. The Contractor must supply to UKILN a new status report and evidence of validation of compliance at least annually; and

9.12.4 the Contractor will immediately notify UKILN if it learns that it is no longer PCI DSS compliant and will immediately provide UKILN with details of the steps being taken to remediate the non-compliance status. In no event should the Contractor's notification to UKILN be later than five working days after the Contractor learns it is no longer PCI DSS compliant.

## **10 TERMINATION**

10.1 Without prejudice to Condition 10.2 UKILN shall be entitled to cancel any Order in whole or in part by giving notice to the Contractor or Supplier at any time prior to the performance of the Services or the delivery of the Goods in which event UKILN's sole liability shall be to pay to the Contractor or Supplier fair and reasonable compensation on a time and materials basis for work already undertaken at the time of cancellation but such compensation shall not include loss of anticipated profits or any indirect or consequential loss.

10.2 UKILN shall have the right at any time by giving notice in writing to the Contractor or Supplier to terminate the Agreement forthwith if:

10.2.1 the Contractor or Supplier commits a material breach of any of the terms and conditions of the Agreement and, without limitation, for these purposes a breach of the warranties in Condition 6, B4 or C4 or any of the conditions or warranties implied into the Agreement by the Sale of Goods Act 1979 shall be a material breach;

10.2.2 any distress, execution or other legal process is levied upon any of the assets of the Contractor or Supplier;

10.2.3 the Contractor or Supplier:

stops or suspends, or declares any intention to stop or suspend, its business or payment of its debts or any class of its debts generally or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or otherwise becomes insolvent;

- a receiver or administrative receiver is appointed in respect of the Contractor or Supplier or the whole or any part of its assets or undertaking, the Contractor or Supplier requests the appointment of such a person or any step is taken to enforce any charge, mortgage or other security interest over all or any [material] part of its assets or undertaking or any of the same is or becomes enforceable;
- a notice is issued for the purposes of convening a meeting to approve the placing of the Contractor or Supplier in administration or liquidation, or a petition is presented or an order made for the administration or liquidation of the Contractor or Supplier or the Contractor or Supplier otherwise becomes subject to dissolution proceedings;
- a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended by the Insolvency Act 2000), a scheme of arrangement under section 895 of the Companies Act 2006 or any other arrangement, compromise or composition of the Contractor's or Supplier's debts, or any class of its debts, is proposed or made by or with the Contractor or Supplier; or



- a judgment, order or award made against the Contractor or Supplier is outstanding and not discharged within 10 days or if any distress, execution, sequestration or similar process is levied on or commenced against any of the assets of the Contractor or Supplier.

10.2.4 the Contractor or Supplier ceases or threatens to cease to carry on its business;

10.2.5 the financial position of the Contractor or Supplier deteriorates to such an extent that in the opinion of UKILN the capability of the Contractor or Supplier adequately to fulfil its obligations under the Agreement has been adversely affected; or

10.2.6 UKILN reasonably considers that any of the events mentioned above is about to occur in relation to the Contractor or Supplier.

10.3 UKILN may terminate the Agreement or any Order at any time on no less than 28 days notice in writing to the Contractor or Supplier with no further liability to the Contractor or Supplier except for the Charges payable during that period of notice.

10.4 UKILN may terminate the Agreement or any Order at any time in writing to the Contractor or Supplier with no further liability to the Contractor or Supplier if the Contractor or Supplier has committed a crime or has become involved in a situation or activity which, in the reasonable opinion of UKILN, has a negative effect on the reputation of UKILN or any aspect of its business or September 2023 which could expose UKILN to scandal or disrepute.

10.5 The termination of the Agreement, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

10.6 On expiry or termination of the Agreement, the Contractor or Supplier and any employees, agents or sub-contractors shall ensure that all documentation, data and information (including all copies of such information stored in any written or electronic form) which constitutes confidential information of UKILN shall be returned to UKILN forthwith and, upon UKILN's written request, shall confirm full compliance with this Condition 10.6 in writing.

10.7 On expiry or termination of this Agreement, the Contractor agrees to grant full access to its premises to UKILN, its employees, agents or sub-contractors in order for the full retrieval of any goods which are owned by UKILN but held by the Contractor in accordance with Condition B7 to take place.

10.8 On expiry or termination of this Agreement, the Contractor or Supplier shall (unless UKILN specifies otherwise) fulfil all outstanding Orders in accordance with their terms.

## **11 FORCE MAJEURE**

11.1 For the purpose of the Agreement the term Force Majeure shall mean any act, event or omission beyond the reasonable control of a party including, without limitation:

(a) war and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo;

(b) rebellion, revolution, insurrection, military or usurped power or civil war riot, civil commotion or disorder or malicious damage except where solely restricted to employees of the Supplier or its agents or sub-contractors;

(c) earthquake, flood, fire, epidemic, pandemic or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure;

(d) a significant disruption to a utility service or transport network (including shipping) or general industrial dispute not limited to the employees of the Contractor or Supplier or the employees of any of its agents or subcontractors;

(e) compliance with any law, governmental order, rule, regulation or direction.

11.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then that party shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.

11.3 Neither party shall be considered to be in default of its obligation under the Agreement to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Agreement and which was not foreseeable at the date of the Agreement. In the event that under such circumstances the Agreement has not been performed for a period exceeding 2 months or it appears impossible or unlikely that the whole or a substantial part of the Agreement shall be capable of performance for a period exceeding 2 months, then the non-defaulting party may elect to terminate the Agreement upon 2 weeks written notice without any liability on that party.

11.4 The Contractor or Supplier shall be liable for and shall not be excused non-performance of the Agreement due to, any performance or non-performance by its employees, sub-contractors or agents.

## **12 DISPUTE RESOLUTION**

12.1 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this contract through prompt negotiations between senior executives of the parties, who have authority to settle the same.

12.2 If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties agree to refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) model procedure.

12.3 If the matter has not been resolved by the mediation procedure within 60 days of the initiation of that procedure, or if any party will not participate in the mediation procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales, or in Scotland if so determined pursuant to Condition 14.9. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties. Should the parties be unable to agree on the appointment of an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. The Arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have given written consent.

12.4 Each party shall be liable for their own costs, including legal costs, through the mediation and arbitration process but the costs and expenses of the mediator or arbitrator shall be shared equally between the parties unless otherwise determined by the Arbitrator.

12.5 All negotiations connected with the dispute, mediation or arbitration process shall be conducted in strict confidence and any settlements arising from the process shall be recorded in writing and shall remain binding on all parties.

12.6 Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

### **13. ASSIGNMENT**

13.1 Each Order is personal to the Contractor or Supplier and the Contractor or Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under this Agreement or any Order without the prior written consent of UKILN. In the event the Contractor or Supplier is permitted to subcontract any part of the provision of Services or the supply of Goods, or its obligations under the Agreement, the Contractor or Supplier shall ensure that the service contract with the third-party contractor or supplier shall be made in accordance with these Conditions and the responsibility and accountability for the performance of the Services or provision of the Goods shall remain entirely with the Contractor or Supplier.

13.2 UKILN may assign the Agreement or any part thereof (including any Order) to any person, firm or Charity, subject to the September 2023 Contractor's or Supplier's written agreement, that will not be unreasonably withheld.

### **14 GENERAL**

14.1 Each right or remedy of UKILN under the Agreement is without prejudice to any other right or remedy of UKILN whether under the Agreement or not.

14.2 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement and the validity and enforceability of the other provisions of the Agreement shall not be affected.

14.3 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Failure of or delay by UKILN to exercise or enforce any provision of the Agreement shall not constitute a waiver of any of its rights under the Agreement nor operate to prevent the exercise or enforcement of such provision on any other occasion.

14.4 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

14.5 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.6 UKILN fully supports the requirements of the Bribery Act 2010. The Contractor or Supplier warrants that it has in place and undertakes that it will comply with policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its own organisation and in connection with its dealings with UKILN.

14.7 The Contractor or Supplier warrants and undertakes that it shall fully comply with all applicable laws, statutes and regulations in force and shall comply with all appropriate policies and procedures relating to (i) anti-slavery and human trafficking including without limitation the Modern Slavery Act 2015 and (ii) any money laundering or the facilitation of tax evasion including without limitation the Proceeds of Crime Act 2002, the Money Laundering Regulations 2017 and the Criminal Finances Act 2017.

14.8 The Contractor or Supplier recognises that everyone has the right to protection from harm, abuse, harassment and exploitation and warrants that it will take all reasonable action to safeguard and protect from harm, abuse, exploitation and harassment anyone who is involved with, or comes into contact with, its operations. The Contractor or Supplier shall implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chain, to minimise as far as is reasonably possible the risk of harm, abuse, exploitation and harassment occurring in its supply chain. The Contractor or Supplier further recognises that all children below the minimum working age (normally the end of compulsory schooling) have a right to complete a basic education and to physical, social, mental, psychological and spiritual development, and undertakes that it will take all reasonable action to ensure that children are not deprived of an education and/or separated from their families through labour in support of its operations, and shall implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chain, to minimise as far as is reasonably possible the risk of harm arising through child labour in its supply chain.

14.9 The formation, construction, performance, validity and all aspects of the Agreement are governed by English law or where the performance of the Agreement is exclusively in Scotland, under Scottish law, and the parties submit to the exclusive jurisdiction of the English or Scottish Courts as applicable. In the event of a disagreement between UKILN and the Contractor or Supplier over the appropriate jurisdiction for the Agreement then the final decision will be taken by UKILN.

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## **Section B**

The following Conditions, together with Section A, are solely applicable to Contractors and the provision of any Services to UKILN.

### **B1 SUPPLY OF SERVICES**

Pursuant to Condition 3 under Section A, the following Conditions shall apply:

B1.1 Any Specifications or equipment supplied by UKILN to the Contractor, or produced by the Contractor in compliance with its obligations under this Agreement in the provision of the Services shall be the sole and exclusive property of UKILN and accordingly shall be assigned to UKILN in accordance with Condition B9.1.

B1.2 The Contractor shall provide the Services in accordance with any Service Levels.

### **B2 DELIVERY AND ACCEPTANCE**

B2.1 UKILN shall not be deemed to have accepted the Services until it has had a reasonable time to review and confirm that they correspond to the Agreement or any Specifications provided by UKILN and has not notified the Contractor of its rejection of the Services within that time. If UKILN does not accept the Services as conforming to the Agreement, the relevant Order or any Specification, it may exercise any of the remedies set out in Conditions B4 as applicable.

B2.2 No Services performed under the Agreement earlier than the due date for delivery as set out in the Order, or in any delivery schedule, will be accepted or paid for unless UKILN notifies the Contractor in writing of its intention to accept the same.

### **B3 RISK AND TITLE**

B3.1 Any product of the provision of the Services shall be at the Contractor's risk until the Services are completed in accordance with the Agreement and accepted by UKILN, provided that, unless otherwise specified in the Order, risk shall be deemed to have passed to UKILN if UKILN has not notified the Contractor of its acceptance or otherwise of such products within 1 month of completion of the Services. September 2023

#### **B4 WARRANTIES AND INDEMNITY**

Pursuant to Condition 6 under Section A, the following Conditions shall apply:

B4.1 The Contractor warrants to UKILN that the Services:

B4.1.1 will be performed by appropriately qualified, trained and experienced personnel, with a high standard of skill, care and diligence;

B4.1.2 will be performed to such high standard of quality in line with good industry practice as it is reasonable for UKILN to expect in all the circumstances; and

B4.1.3 will comply with all statutory requirements, implied terms, regulations and codes of practice relating to the supply of services generally and the Services in particular.

B4.2 The Contractor acknowledges that precise conformity of the Services with the Agreement is of the essence of the Agreement and UKILN shall be entitled to reject the Services if they are not in conformity or in accordance with the Agreement, however slight the breach may be.

B4.3 In the event that UKILN does reject the Services under Condition B4.2 above the Contractor shall, at its own cost, forthwith remedy the fault or (at UKILN's option) perform the Services afresh.

#### **B5 REMEDIES**

B5.1 Without any prejudice to any other right or remedy which UKILN may have, if the Services are not supplied in accordance with the Agreement, UKILN may:

B5.1.1 require the Contractor, at the Contractor's own expense, (at the choice of UKILN) promptly to repair any fault or defect in the Services or do any work necessary to make the Services comply with the Agreement and/or the relevant Order; or

B5.1.2 carry out, at the Contractor's expense, any work necessary to make the Services comply with the Agreement and/or the relevant Order.

#### **B6 SERVICING**

B6.1 Unless otherwise agreed, the Contractor will, in all cases where it provides machinery or equipment for the performance of the Services under or in connection with an Order, maintain for at least the normal life of the machinery or equipment an adequate stock of spare and replacements parts and components and an adequate number of trained and expert personnel so as to ensure that all necessary maintenance, adjustments or repairs to the machinery or equipment shall be carried out with the minimum delay.

#### **B7 CUSTODY**

B7.1 If the Order relates to the application Services by the Contractor (including any process) to goods supplied by UKILN to the Contractor for that purpose the following additional conditions shall apply to the Agreement whether the goods supplied belong to UKILN or to any third party:

B7.1.1 The Contractor shall be a bailee of the goods and shall only hold them for the purpose of applying the Services thereto.

B7.1.2 The Contractor shall at times, while such goods are in its care and control (or the care and control of any agent or subcontractor to the Contractor) insure the same with a reputable insurer to the replacement value of such goods against loss, damage or destruction and shall inform UKILN forthwith if the goods are lost, damaged or destroyed and pay to UKILN the full replacement value of such goods and shall indemnify UKILN against any expenses, liability, loss, claim or proceedings by reasons of, or in consequence of, such loss, damage or destruction.

## **B8 PERSONNEL**

B8.1 The Contractor shall ensure that all Personnel who are given access to any of UKILN's premises are:

B8.1.1 of smart and clean appearance and polite;

B8.1.2 suitably trained, qualified, skilled and experienced in the provision of the Services; and

B8.1.3 required to maintain confidentiality in relation to any information which comes into their possession regarding Charity and/or any third party as a result of them providing the Services.

B8.2 UKILN reserves the right to require the Contractor to remove and replace at any time any individual from the Personnel. In such cases, the Contractor shall provide a suitable and acceptable replacement as soon as is reasonably practicable.

B8.3 The Contractor shall be solely liable for the remuneration of all Personnel and shall indemnify and keep indemnified the R SPB, UKILN and any of its Subsidiaries or Holding Companies and any third party which replaces the Contractor as a provider of Services (together the **"Indemnified Persons"**) against any and all liabilities, losses, damages, injury, costs, claims and expenses (including reasonable legal fees) awarded against or incurred or paid by any Indemnified Person as a result of or in connection with:

B8.3.1 the employment or, as the case may be, engagement or termination of employment or engagement of such Personnel by the Contractor; and/or

B8.3.2 the transfer or any allegation that the contract of employment in respect of any such Personnel transfers or has transferred as a matter of law, to an Indemnified Person. In the event of such an allegation, the relevant Indemnified Person shall be entitled to terminate the employment of any such Personnel immediately on becoming aware of such transfer or allegation. September 2023

**B9 INTELLECTUAL PROPERTY RIGHTS**

B9.1 Unless otherwise agreed in writing, all Intellectual Property Rights in and to the outputs of the Services and any Specifications are hereby assigned with full title guarantee (including by way of a present assignment of future copyright and/or unregistered design right) by the Contractor and shall vest in UKILN. The Contractor shall (at the request of UKILN, but at the Contractor's cost and expense) do all such acts and things (including executing all documents) required to vest such Intellectual Property Rights in UKILN in accordance with this Condition B9.

B9.2 The Contractor warrants that the Specifications, the materials, all deliverables and outputs of and the use of the Services by UKILN shall not infringe any Intellectual Property Rights of any third party. The Contractor shall keep UKILN indemnified against any and all liabilities, losses, damages, injury, costs, claims and expenses (including reasonable legal expenses) awarded against or incurred or paid by UKILN arising out of or in connection with any breach by the Contractor of this Condition B9.

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ENDS

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