



**Treework Environmental Practice**

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02 May 2023

info@treeworks.co.uk  
www.treeworks.co.uk

Dear Neil,

### Services

### Fee Proposal for the Reinspection of Trees at Newent Town Council 2023/24

Design Planning and Construction  
Tree Risk Surveys and Management  
Comprehensive Tree Management  
Veteran Tree Surveys/Management  
Expert Witness  
TPO Advice  
Static Load Test  
Tree Work Contract Administration  
MyTrees Tree Management Software  
Tree Planting Plans  
Tree Planting Audits and Health Assessments  
Tree Policies and Strategies  
Home-buyers Reports  
Structural Damage Reports  
Soil Health Assessments  
Grounds Maintenance Mapping

Following your invitation, I am writing to provide you with a fee proposal for the re-inspection of trees due for inspection before the end of the 2023/24 financial year to support Newent Town Council to meet their duty of care for public safety in relation to trees, and to maintain the trees so that they continue to benefit local residents and the wider landscape.

The methodology quoted for below is consistent with previous inspections and has been prepared with reference to recent correspondence, and provides cost effective and defensible tree risk management.

Services to be provided:

### Tree Survey

### Provision of Tree and Work Schedules, Summary Email and Tree Plans

**Total Fees (exclusive of VAT)**

**£2565.00**

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No 1621606

This fee proposal is based on the provision of the following services:

**Tree Survey**

**(291 trees and tree groups over 5 sites due before end of 2023/24, including the signing off of works completed since the last survey)** £2388.00

*(inclusive of set up, travel time, mileage and associated survey expenses)*

**Summary Email, Tree Schedule, Works Recommendations Schedule and Tree Plan** £177.00

*(schedule of all trees and groups surveyed and schedule of works will be supplied digitally in \*.pdf and \*.xls format. Site plans will be supplied in \*.pdf showing trees with trees recommended for work within the next budget year highlighted)*

**Total Cost (ex VAT)** £2565.00

These quoted prices are based on the following assumptions:

- 1) Our surveyors will have unimpeded, safe access to all trees that are to be surveyed.
- 2) The survey will be carried out in accordance with the method described below.

Please see our appended terms and conditions and schedule of rates. I hope that this is acceptable.

Kind regards,



Claire Harbinson  
**Principal Arboricultural Consultant**

**Mobile:** 07908 556442

**Email:** [claireharbinson@treeworks.co.uk](mailto:claireharbinson@treeworks.co.uk)

## Scope of Works

### *Data Collection*

The tree data will be updated directly into our tree management database with integrated GIS (MyTrees) in the field on a tablet computer.

The re-inspection of trees and tree groups will update records for all objects identified as requiring re-inspection before the end of the 2023/24 financial year, including trees with Year 1 works identified during the initial survey. The following information reviewed and updated where necessary:

- Site name
- Tree/group number (unique within site)
- Species (common and scientific names)
- Dimensions
  - Tree height (estimated in meters)
  - Crown spread (estimated in meters)
  - DBH (stem diameter at 1.5 m, estimated in centimetres)
  - Number of stems
- Age class (Young, Semi-Mature, Early Mature, Mature, Late Mature, Ancient/Veteran)
- Physiological condition (Good, Fair, Poor, Dead)
- Condition notes (where the following are apparent)
  - Tree hazards and indications of structural weakness
  - Observed disease, bacteria or fungus
  - Observed structural damage to buildings, walls, footpaths, etc. where immediately evident
- Management recommendations
  - Descriptions of works required to manage tree risk
  - Description of works to maintain form and condition (long-term management)
  - Description of works to manage nuisance
- QTRA index for trees with works to manage risk if less than 1 in 1,000,000
- Work priority (in months/years)
- Recommended interval of next inspection
- Safety action date
  - Approximate date when work should preferably be carried out by (i.e., if the tree is surveyed on December 12<sup>th</sup> 2021 and the priority is “2 years”, then the safety action date will be December 12<sup>th</sup> 2023)
- Estimated cost of works (for budgeting purposes)
- Signing off of completed works
- Survey date
- Surveyor name

The re-inspection will update information already held for trees and plot trees not previously surveyed within the sites identified by the client in the original surveys, if any. The Visual Tree Assessment method (Mattheck and Breloer, 1994) will be used to identify hazards and apply this expertise to an understanding of the likelihood of harm occurring in the event of failure of all or parts of the tree. Binoculars, mallet and fine manual metal probe will be used to aid tree assessment. No invasive or other detailed internal decay detection devices will be used in assessing trunk condition.

### ***Health and Safety***

A project-specific risk assessment will be drawn up (see example of generic and site specific risk assessment will be provided on request). This will cover site hazards, lone working, local emergency services etc. and will be discussed with and presented to the survey team at the pre- survey team meeting.

Survey team members will feed information back to the Project Manager that may influence the project-specific risk assessment. Any amendments to the project-specific risk assessment will be disseminated to the survey team.

### ***Project Timing***

Set up could begin immediately after appointment, or to suit within the budget year.

We have calculated that the survey can be completed within 3 working days from commencement.

# Treework Environmental Practice

## Current Schedule of Rates



Treework Environmental Practice

Treework Environmental Practice consultancy fees are outlined below and are applicable when accepted as the basis for work.

### Consultancy Fees

Fee rates will depend on work or activity type and personnel based on seniority. Any decision regarding the level of personnel employed on a project will be taken by the Directors of Treework Environmental Practice and will be based on the requirements of the project, on project deadlines and on staff availability.

Area	Personnel	Fee for 7.5 Hour Day (ex. VAT)	Fee per Hour (ex. VAT)
Tree	Director/ Principal Arboricultural Consultant	£1200	£160
Tree	Managing Director/ Senior Arboricultural Consultant	£825	£110
Tree	Principal Arboricultural Consultant	£825	£110
Tree	Arboricultural Surveyor	£450	£60
CAD/GIS	Senior CAD / GIS Technician	-	£75
CAD/GIS	Arboricultural Design Technician	-	£75
Soil	Soil Technician	£525	£70
Admin	Administrator	-	£55
Legal	Expert Witness in Court	-	£280

### Expenses

Mileage	£0.45 per mile
Travel time	Consultant's Rate
Expenses	Charged at Cost

The provision of reports and plans is in digital format. These charges will be made at our standard hourly rate. Where other formats or materials are required, these will be charged for.

### Other

Letter of reliance	£200.00 per letter
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All quoted costs are exclusive of VAT.

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### Services

Design Planning and Construction  
Tree Risk Surveys and  
Management Comprehensive  
Tree Management  
Veteran Tree  
Surveys/Management Expert  
Witness  
TPO Advice  
Static Load Test  
Tree Work Contract Administration  
MyTrees Tree Management  
Software Tree Planting Plans  
Tree Planting Audits and Health  
Assessments  
Tree Policies and  
Strategies Home-buyers  
Reports Structural  
Damage Reports Soil  
Health Assessments  
Grounds Maintenance Mapping

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# Terms and Conditions of Supply of Services



Treework Environmental Practice

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### CLAUSE

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**THE SCHEDULE** – included as required for Data protection as set out in Clause 7

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**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 3 (SUPPLY OF SERVICES) AND CLAUSE 8 (LIMITATION OF LIABILITY).**

### 1. Interpretation

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

#### 1.1 Definitions:

- **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- **Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.
- **Commencement Date:** has the meaning given in clause 2.2.
- **Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.5.
- **Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
- **Contract year:** means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
- **Customer:** the person or firm who purchases Services from the Supplier.
- **Customer Default:** has the meaning set out in clause 4.2.

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- **Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.
- **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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.
- **Order:** the Customer's order for Services as set out in the Customer's written acceptance of a quotation by the Supplier or the Customer's purchase order form, as the case may be.
- **Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.
- **Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer set out in the Supplier's quotation for the Services.
- **Subsidiary:** a subsidiary of the Supplier, has the meaning given in section 1159 of the CA 2006 and includes the subsidiary companies: (i) Treework Environmental Practice Limited (CRN: 07644287) and (ii) Treestats Ltd (CRN: 12598163).
- **Supplier:** TREEWORK SERVICES LIMITED registered in England and Wales with company number 01621606 trading as: "Treework Environmental Practice".
- **Supplier Materials:** has the meaning set out in [clause 4.1\(h\)](#).
- **Total charges:** means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

## 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-enacted from time to time; and
  - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or



published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 2 months from its date of issue.

### **3. Supply of Services**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services or if information comes to light after the Supplier has started delivering Services that indicates that an amendment to the Specification is appropriate and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using the skill, care and diligence reasonably to be expected of an appropriately qualified and competent professional consultant experienced in performing the same services in relation to projects of similar scale, complexity, character and value as the Services.
- 3.5 Trees are growing living organisms, subject to environmental impacts. Any assessment of a tree carried out by the Supplier will, unless otherwise stated by the Supplier, not continue to be valid beyond a period of 12 months, or beyond the priority for works set by the survey or beyond any storm or other event that could affect the tree, whichever is the sooner.
- 3.6 The Supplier reserves the right at all times at its discretion to supply the Services using the services of its employees, sub-contractors, consultants or agents or its Subsidiary companies.

### **4. Customer's obligations**

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's site, premises, office accommodation (if required) and other facilities as reasonably required by the Supplier;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and ensure that such information is (i) complete and accurate in all material respects and (ii) is provided to the Supplier in sufficient time before the Services are due to be delivered;
  - (e) prepare the Customer's site for the supply of the Services;





- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and maintain any such licences, permissions and consents for as long as is required to enable the Supplier to provide the Services;
  - (g) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
  - (h) comply with any additional obligations as set out in the Specification.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. Charges and payment

- 5.1 The Charges for the Services:
- (a) shall be set out in the Order, or
  - (b) if no fixed fee is set out in the Order, or if additional work is required, at the Supplier's hourly rates for each individual as set out in the Specification.
  - (c) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 The Supplier shall invoice the Customer on completion of the Services where the Services are completed within a short time frame or otherwise weekly/monthly in arrears as the Services are delivered. However prepayment for the Services may sometimes be required and if so this will be set out in the Specification.
- 5.3 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice (unless otherwise stated in the Order); and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and



- (c) time for payment shall be of the essence of the Contract. The Customer will be liable for payment of each invoice in full in accordance with this clause regardless of whether the Customer has received funds from its own client or other 3rd party.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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 Services at the same time as payment is due for the supply of the Services.
- 5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer 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 5.5 will accrue each day 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 that base rate is below 0%.
- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6. Intellectual property rights**
- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 6.5 The Customer agrees that the Supplier shall be entitled to use all data collected by the Supplier in the course of providing the Services (**Tree Data**), including without limitation, to analyse trends and to inform research and to share Tree Data with the Supplier's research partners for an indefinite period of time PROVIDED THAT where the Supplier shares Tree Data with a 3<sup>rd</sup> party it shall only do so on the basis that the Tree Data is anonymised. The Supplier shall not share Tree Data with 3<sup>rd</sup> parties that has not been anonymised without obtaining the Customer's prior written consent.

## 7. Data protection

Where the supply of Services involves the processing of personal data, the parties shall comply with their data protection obligations as set out in 0 and will enter into a separate data processing agreement on terms set out in Part A of Schedule 1 which will specify in Part B, the data processing and security details relevant to the Services.

## 8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution, deliberate breach or otherwise.

8.3 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.

8.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.5 Subject to clause 8.4 the Supplier's total liability to the Customer for all loss or damage shall not exceed the cap.

8.6 In clause 8.5: the cap is an amount equal to the Total Charges in the Contract Year in which the breaches occurred.

8.7 The caps on the Supplier's liabilities shall be reduced by:

- (a) payment of an uncapped liability;
- (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

8.8 Subject to clause 8.3 (No limitation of customer's payment obligations) and clause 8.4 (Liabilities which cannot legally be limited), this clause 8.8 sets out the types of loss that are wholly excluded:

- (a) loss of profits.
- (b) loss of sales or business.
- (c) loss of agreements or contracts.
- (d) loss of anticipated savings.
- (e) loss of use or corruption of software, data or information.
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.9 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.10 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.11 This clause 8 shall survive termination of the Contract.

## 9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 month's written notice.

9.2 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:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;
- (b) 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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;
- (c) 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
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2(b).

## 10. Consequences of termination

10.1 On termination or expiry of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of 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.

10.3 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.

## 11. General

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

11.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### **11.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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.

**11.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.6 Waiver.** 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 right or remedy. 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.

**11.7 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 this agreement. If any provision or part-provision of this Contract deleted under this clause 11.7 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.

#### **11.8 Notices.**

- (a) Any notice or other communication 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 first-class 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); or sent by email to the address specified in the Order.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**11.9 Third party rights.**

(a) Unless it expressly states otherwise, 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.

**11.10 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.

**11.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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*add The Schedule below if required*

**The Schedule**

**Data protection**