



## STANDARD TERMS AND CONDITIONS OF PURCHASE- SEPTEMBER 2019

### 1. INTERPRETATION

The following definitions apply to these Conditions.

**Aviva Sites:** means: (a) any Purchaser Group premises; (b) any property owned or occupied by any member of the Purchaser Group (including where the Purchaser or any other Purchaser Group member is a tenant and is provided building-related services through a lease); and/or (c) land which the Purchaser or a Purchaser Group member is responsible for maintaining or on which it is required to work.

**Commencement Date:** the date on which the Supplier is required to commence the Services or Works as set out in the PO, or, if no such date is specified, the date that the PO was issued.

**Completion Date:** the date on which the Supplier is required to complete the Services or Works as set out in the PO, or, if no such date is specified, the date which is 28 days after the Commencement Date

**Contract:** the PO and these Conditions (including any documents incorporated by references into the PO and these Conditions).

**Data Protection Laws:** means the General Data Protection Regulation (EU) 2016/679 ("GDPR") (together with laws implementing or supplementing the GDPR in Member States of the European Union, in each case as amended and superseded from time to time), and/or all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, relating to data privacy, in each case in each jurisdiction where the Services are delivered (including the Data Protection Act 2018 in the UK).

**Eligible Employees:** means any person, other than apprentices or interns, employed by the Supplier or the Contractor (as defined in Clause 15.2) (including sub-contracted staff of the Contractor) who: (a) is aged 18 or over; (b) works for two (2) or more hours of work in any given day in a week; and (c) works for eight (8) or more consecutive weeks in a year.

**Goods:** any goods agreed in the PO to be bought by Purchaser from the Supplier (including any part or parts of them).

**Goods Due Date:** the date(s) for delivery of the Goods as set out in the PO, or, if no such date is specified, the date which is 28 days after the date that the PO was issued.

**Living Wage:** means either: (a) the "London Living Wage" as set by the Greater London Authority (or its successor) from time to time (if the Aviva Site is located in the 32 London Boroughs or the City of London); or (b) the "UK Living Wage" as set by the Living Wage Foundation (or its successor) from time to time (if the Aviva Site is located in the UK (but outside the 32 London Boroughs or the City of London)).

**Loss** means all losses (including fines, penalties and tax liabilities), demands, liabilities, claims (threatened or actual), proceedings and damages and all related costs, expenses and payments, including those made to third parties (including additional taxes, irrecoverable VAT, legal fees and disbursements and costs of investigation, litigation, settlement, judgment and interest);

**PO** means the purchase order, being the Purchaser's written instruction to supply the Goods, Works and/or Services, incorporating these Conditions, detailing all necessary descriptions, specifications and patterns and including the PO number.

**Purchaser:** means the purchaser set out in the PO.

**Purchaser Group:** means the group of companies, the ultimate holding company of which is Aviva plc (company no: 2468686) or any successor thereto.

**Services:** any services, including any work products of the Services, agreed in the Contract to be bought by Purchaser from the Supplier (including any part or parts of them) and include Works;

**Supplier:** the person, firm or company who accepts the PO.

**Works:** the works and commissioning to be carried out by the Supplier for the Purchaser as set out in the PO, where such Services are to be provided on Aviva Sites.

**Zero Hours Contract:** has the meaning given in section 27A(1) of the Employment Rights Act 1996.

### 2. APPLICATION OF TERMS

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 Each PO shall be deemed to be accepted on the earlier of the Supplier: (a) giving notice of acceptance of the PO; or (b) fulfilling the order for Goods and/or Services, in whole or in part.

2.3 No variation to these Conditions shall be effective unless agreed in writing by Purchaser.

### 3. PRICE AND PAYMENT

3.1 The price of the Goods and/or Services shall be stated in the PO and shall be exclusive of VAT but inclusive of all other costs, expenses and taxes.

3.2 The Supplier shall promptly invoice the Purchaser following delivery in full of the Goods and/or Services (or otherwise in accordance with the payment schedule set out in the PO) using the Purchaser's electronic invoicing system. Other than if due to Purchaser's fault, invoices not submitted within 6 months of when due shall no longer be payable by Purchaser and the Supplier irrevocably waives any right to recover such amounts.

3.3 Subject to 3.3A, the Purchaser shall pay the price of the Goods and/or Services within 30 days of receipt of invoice which is correctly submitted electronically the Purchaser's electronic invoicing system (as notified by Purchaser from time to time), with such costs of e-invoicing to be borne by the Supplier. The Suppliers must first register on Aviva's supplier portal and then be approved via Aviva's selected e-procurement partner prior to commencing any Services.

3.3A Where the Contract is a Construction Contract within the meaning of the Housing Grants Construction and Regeneration Act 1996 (as amended) ("HGCRA"), the Supplier shall submit an application for payment/invoice to the Purchaser through the Purchaser's electronic invoicing system and the payment due date shall be 10 (ten) days after the submission of the application for payment/invoice. No later than 5 (five) days after submission of the application for payment/invoice through the Purchaser's electronic invoicing system, the Purchaser shall issue a payment notice notifying the Supplier of the sum that the Purchaser considers to be due at the payment due date in respect of the payment and the basis on which the sum has been calculated. The final date for payment of any sum under this clause shall be 28 (twenty-eight) days after the submission of the application for payment/invoice. Unless the Purchaser serves a Pay Less Notice (as defined below), the Purchaser shall: (a) pay the sum referred to in the payment notice; or (b) if the Purchaser has not served a payment notice, the sum set out in the Supplier's original application for payment/invoice (each referred to, as applicable, as the notified sum) on or before the final date for payment. Not less than 2 (two) days before the final date for payment/invoice (the prescribed period), the Purchaser may give notice that it intends to pay less than the notified sum (a "Pay Less Notice"). Any Pay Less Notice shall specify the sum that the Purchaser considers to be due on the date the notice is served and the basis on which that sum is calculated.

3.4 If any sum properly payable under the Contract is not paid when due, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Barclays Bank plc base rate from time to time. The Supplier acknowledges that this is a substantial contractual remedy for late payment for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

3.5 The Supplier is not entitled to suspend deliveries of the Goods and/or supply of the Works or Services as a result of any sums being outstanding unless it has first notified the Purchaser of its intention to do so and has given the Purchaser a reasonable opportunity to make payment.

3.6 If the Purchaser has any bona fide query or dispute regarding any amount included in any of the Supplier's invoice, it shall notify the Supplier as soon as possible and the Supplier and Purchaser shall work together in good faith to resolve the dispute or query within 30 days of notification. Once the dispute has been resolved, Purchaser shall pay the amount due as part of that resolution within 30 days of such resolution and no Late Payment Interest shall apply with respect to any such amount, provided however that Late Payment Interest shall start to accrue from the expiry of a 30 day period beginning upon the date upon which it is agreed that such amounts are properly due and payable to the Supplier.

### 4. GOODS

4.1 The Goods shall be delivered, carriage paid, to the place of delivery, and at the times and dates, stipulated by the Purchaser as set out in the PO.

4.2 The Goods shall be of the best available design, quality, material and workmanship, be without fault and conform in all respects with the PO and shall comply with all relevant statutory and regulatory requirements. The Purchaser's rights under these Conditions are in addition to the statutory conditions implied in favour of the Purchaser by the Sale of Goods Act 1979.

4.3 Prior to delivery of the Goods to the Purchaser the Purchaser shall have the right to inspect and test the Goods at any reasonable time notified to the Supplier. If the results of such inspection or testing cause the Purchaser to be of the opinion that the Goods do not conform or are unlikely to conform with

the PO, the Purchaser shall inform the Supplier and the Supplier shall immediately take such action (at no additional charge) as is necessary to ensure conformity and in addition the Purchaser shall have the right to require and witness further testing and inspection.

- 4.4 The Supplier shall ensure that the Goods are fit for any purpose held out by the Supplier or made known to the Supplier by Purchaser expressly or by implication, and in this respect Purchaser relies on the Supplier's skill and judgement and where they are manufactured products, be free from defects in design, material and workmanship and remain so for at least 12 months after delivery.
- 4.5 The Goods shall remain at the risk of the Supplier until delivery to Purchaser is complete (including offloading and stacking). Title in the Goods shall pass to Purchaser on delivery subject to Purchaser's payment for such Goods.
- 4.6 The Purchaser shall not be deemed to have accepted the Goods, Works and/or Services until it has had 10 (ten) business days to inspect them following delivery of the Goods or notification that the Works or Services are complete. The Purchaser shall also have the right to reject the Goods as though they had not been accepted during the period of 10 (ten) business days after any latent defect in the Goods has become apparent.
- 4.7 If the Goods are delivered to the Purchaser in excess of the quantities ordered, the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be collected by or on behalf of the Supplier at the Supplier's expense.
- 4.8 These Conditions shall apply to any repaired or replacement Goods.
- 4.9 Without prejudice to any other right or remedy which the Purchaser may have, if any Goods, are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract (including delivery by the Goods Due Date), the Purchaser shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods, Works and/or Services have been accepted by the Purchaser: (a) cancel the Contract in whole or in part; (b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier; and to refuse to accept any subsequent delivery of the Goods; (c) at the Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods; (d) recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining the Goods in substitution from another supplier; or (e) claim damages as may have been sustained (including for additional costs, loss or expenses incurred by the Purchaser) which are in any way attributable to the Supplier's failure.
- 4.10 The provisions of this Clause 4 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial Goods provided by the Supplier.

## 5. SERVICES

- 5.1 In providing the Services, the Supplier shall:
  - 5.1.1 co-operate with Purchaser and comply with all reasonable instructions of Purchaser in matters relating to the Services;
  - 5.1.2 perform the Services with all the reasonable care, skill and diligence to be expected of an appropriately qualified and competent service provider and/or (as applicable) professional consultant experienced in performing services of a similar nature to the Services in relation to services of a similar scale, complexity, character and value as the Services, and in accordance with: (a) generally recognised commercial practices and standards; (b) all applicable legislation from time to time in force; (c) any specific requirements as set out in the PO; and (d) any applicable codes of practice and conduct set out in any relevant professional body to which the Supplier is a member;
  - 5.1.3 ensure that the Services will conform with all timescales, descriptions and specifications agreed with Purchaser; and
  - 5.1.4 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
  - 5.1.5 the Supplier acknowledges that Purchaser may rely or act on the Services.
- 5.2 The Purchaser's rights under these Conditions are in addition to its rights and remedies implied by statute and common law.
- 5.3 The Supplier shall begin performing the Services on the Commencement Date and shall complete the Services by or on the Completion Date.
- 5.4 Where the Services are (or include) Works, in addition to the other obligations relating to Services, the following will apply:

- 5.4.1 On the Commencement Date the Purchaser shall give the Supplier access to the relevant Aviva Site to enable the Supplier to carry out the Works;
- 5.4.2 The Supplier shall at all times use its best endeavours to prevent any nuisance (including but without limitation noisy work operations) or other interference with the rights of any adjoining land owner, tenant or occupier or any other contractor or consultant or any statutory undertaker arising out of the carrying out of the Works and shall assist the Purchaser in defending any action or proceedings which may be instituted in relation thereto. The Supplier shall be responsible for and shall indemnify the Purchaser from and against any and all expenses, costs (including legal costs), liabilities, losses, claims and proceedings whatsoever resulting from any failure or default by the Supplier in this regard;
- 5.4.3 The Supplier shall complete the Works by the Completion Date. If it becomes apparent that the Works will not be completed by the Completion Date (or any later date agreed pursuant to this clause) the Supplier shall notify the Purchaser. Where delay and/or disruption occurs; for reasons beyond the Supplier's control, due to a change in the law in the country where the Aviva Site is located, or due to prevention, impediment, acts or omissions of the Purchaser or anyone for whom the Purchaser is responsible, the Purchaser shall agree an extension to the Completion Date. If this happens the Supplier shall not be entitled to claim from the Purchaser its loss and expense incurred as a result of such delay/disruption/prolongation of the Works.
- 5.4.4 If any defects occur in the Works during the period of 6 (six) months after the Completion Date due to the Supplier's default the Purchaser shall notify the Supplier by no later than 5 (five) days after the end of this period, and the Supplier shall promptly make good such defects at its own cost.
- 5.4.5 Without prejudice to Clause 5.4.3, if the Works are not completed by the Completion Date (or any extension thereto under) the Purchaser shall be entitled to deduct liquidated damages from the agreed price. The rate of any such liquidated damages shall be as set out in the PO. If no rate of liquidated damages is specified in the PO then this Clause 5.4.5 does not apply and damages shall be at large.
- 5.5 Without prejudice to any other right or remedy which the Purchaser may have, if any Goods, are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract (including delivery by the Goods Due Date), the Purchaser shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods, Works and/or Services have been accepted by the Purchaser: (a) cancel the Contract in whole or in part; (b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier; and to refuse to accept any subsequent delivery of the Goods; (c) at the Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods; (d) recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining the Goods in substitution from another supplier; and (e) claim damages as may have been sustained (including for additional costs, loss or expenses incurred by the Purchaser) which are in any way attributable to the Supplier's failure.
- 5.6 The provisions of this Clause 5 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by the Supplier.

## 6. DATA PROTECTION & SECURITY

- 6.1 The Supplier shall comply with the provisions of Schedule 1 (Data Protection & Security).

## 7. COMPLIANCE

- 7.1 The Supplier shall perform its obligations under this Contract in compliance with all applicable laws and regulations and in providing the Goods and Services and not cause the Purchaser to be in breach of any laws or regulations.
- 7.2 Without prejudice to Clause 8.1, each party undertakes to comply with all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, in each case in each jurisdiction where the Goods and Services are delivered in relation to data privacy.
- 7.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 7.4 The Supplier agrees that it shall ensure that persons providing Goods and Services on behalf of the Supplier understand and comply with all the relevant requirements of these Conditions and Purchaser's applicable regulations,

policies and procedures (including but not limited to security, confidentiality and health and safety) as are notified to the Supplier from time to time.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All intellectual property rights in respect of the Goods, Works and/or Services shall be owned by and vested in the Purchaser (unless otherwise agreed by the Purchaser) on performance of the Services, Works or delivery of the Goods and the Supplier (if required by the Purchaser) shall do all things necessary to assign to the Purchaser, with full title guarantee and free from third party rights, the relevant intellectual property rights. The Supplier warrants that the Goods, Works and/or Services shall not infringe in any way the intellectual property rights of any third party.
- 8.2 Where the Supplier provides the Purchaser with pre-existing materials, the Supplier grants the Purchaser an irrevocable, non-exclusive, world-wide royalty free (including the right to transfer or sub-licence in whole or in part) licence to use/modify such materials and make copies of such materials and/or modifications (and any ancillary rights necessary to enable the Purchaser to make full use of the materials) for any purpose whatsoever.
- 8.3 The Supplier will not use any artwork prepared for the Purchaser in connection with the Goods, Works and/or Services for any other purpose without the prior written consent of an authorised representative of the Purchaser.
- 8.4 The Supplier unconditionally and irrevocably waives all moral rights that exist, or may exist, in the Goods, Works and/or Services and shall use its best endeavours to secure a similar waiver from any employee or permitted sub-contractor of the Supplier.
- 8.5 Materials, equipment and tools and all copyright, design rights or any other forms of intellectual property rights in all documents and data supplied by the Purchaser to the Supplier shall at all times be and remain the exclusive property of the Purchaser but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Purchaser and shall not be disposed of other than in accordance with the Purchaser's written instructions, nor shall such items be used otherwise than as authorised by the Purchaser in writing.

## **9. INDEMNITY AND INSURANCE**

- 9.1 The Supplier shall keep Purchaser indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Purchaser as a result of or in connection with any claim made against Purchaser by a third party:
  - 9.1.1 for actual or alleged infringement of the third party's intellectual property rights arising out of or in connection with the supply or use of the Goods and/or Services;
  - 9.1.2 for death, personal injury or damage to property arising out of or in connection with defects in, or delivery of, Goods or Services, to the extent that the defects in, or delivery of, the Goods or Services are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 9.1.3 arising out of or in connection with the supply of the Goods and Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
  - 9.1.4 arising from a breach of Clause 6 of these Conditions.
- 9.1.5 The Supplier warrants to the Purchaser that to the extent applicable to the provisions of the relevant Goods, Services or Works: (i) it has in force a policy of public and products liability insurance covering the liabilities it may incur under the Contract, with a limit of indemnity not less than £5,000,000 (unless otherwise stated in the PO) for any occurrence or series of occurrences arising out of each and every event and, in respect of products liability, in the aggregate in any one year; and (ii) where the Services being provided under the Contract are professional services which can be covered by a policy of professional indemnity insurance, it has in force and shall maintain in force for 6 years from the Completion Date, a policy of professional indemnity insurance covering the liabilities it may incur under or in connection with the provision of such Services, with a limit of indemnity not less than £1,000,000 for any occurrence or series of occurrences arising out of each and every event and in the aggregate.

## **10. TERMINATION**

- 10.1 The Purchaser shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Purchaser

shall pay to the Supplier all sums owed in respect of Goods, Works and/or Services properly provided in accordance with the Contract together with fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

- 10.2 Each party shall have the right at any time by giving notice in writing to the other to terminate the Contract forthwith if: (a) the other party commits a material breach of any of the Conditions of the Contract; or (b) the other becomes (or threatens to become) the subject of a petition in bankruptcy or any other proceeding relating to insolvency, examinership, receivership, liquidation or assignment for the benefit of creditors or any event analogous to the foregoing occurs in any jurisdiction.
- 10.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination. The provisions of these Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 10.4 Any provisions which are intended to or by their nature ought to survive termination of this Contract shall survive termination or expiry of this Contract, however and whenever occurring.
- 10.5 The Supplier shall provide all assistance, reasonably requested by the Purchaser (at no additional cost) in relation to the cessation of the Services/Work, including where appropriate, the migration of Purchaser data in a meaningful and useable format to us or a successor supplier of the Purchaser.

## **11. ASSIGNMENT AND THIRD PARTIES**

- 11.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of Purchaser. The Supplier shall not sub-contract the provision of the Works, Services and/or the delivery of the Goods to any third party without the prior written consent of Purchaser and, notwithstanding such consent, the Supplier shall remain liable to Purchaser for all breaches or failures by the sub-contractor to abide by the terms of the Contract.
- 11.2 Purchaser may without seeking consent assign or novate the Contract to any member of Purchaser Group.
- 11.3 The Supplier agrees that Purchaser may delegate its responsibilities under this Contract to (i) any member of the Purchaser Group or (ii) third party for the purpose of performing outsource services and/or administering the Contract for and on behalf of Purchaser. The Supplier understands that the Purchaser Group member and/or the third party depending on the responsibilities they have been given by Purchaser may (but subject to Clause 7) have access to the Contract for such purposes.

## **12. BENEFIT**

- 12.1 Save where the context otherwise requires, references to Purchaser in these Conditions include references to the other members of Purchaser Group from time to time, so that, for example, an obligation to supply Goods and/or Services to Purchaser shall be construed as an obligation to supply those Goods and/or Services to Purchaser and to the other members of the Purchaser Group. These Conditions are intended to be enforceable by each member of the Purchaser Group by virtue of the Contracts (Rights of Third Parties) Act 1999 and nothing in this Contract shall prevent Purchaser from seeking and enforcing any remedies under any Contract for and on behalf of any members of the Purchaser Group. The Supplier shall be entitled and obliged to rely upon the authority of Purchaser acting within its scope of authority for the other members of the Purchaser Group in all matters relating to any Contract, unless Purchaser gives the Supplier prior written notice to the contrary
- 12.2 Subject to Clause 13.1, this Contract does not create any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

## **13. AUDIT**

- 13.1 The Purchaser reserves the right on reasonable notice to inspect, audit and/or take copies of all books, time sheets, records, computer records, correspondence, receipts and memoranda of the Supplier insofar as they relate to the Goods, Works and/or Services and the Supplier shall permit Purchaser access to such items.

## **14. ZERO HOUR CONTRACTS AND THE LIVING WAGE**

- 14.1 The Supplier warrants and undertakes that it has not and shall not (and shall ensure that any sub-contractor authorised to perform Works and/or Services under this Contract shall not) use any employee or worker (including agency and/or temporary staff) to perform all or any part of the Works and/or Services under the terms of a Zero Hours Contract UNLESS in any case: (a)

such employee or worker has provided express consent to enter into such a Zero Hours Contract; and (b) the Supplier (or its sub-contractor) can, on request, provide to the Purchaser written evidence of such consent.

- 14.2 To the extent permitted by law, the Supplier shall, and shall ensure that any sub-contractor authorised to perform the Works and/or Services in accordance with this Contract (“**Contractor**”) shall, in each case, when providing Eligible Employees to work at Aviva Sites in the UK shall: (a) pay Eligible Employees not less than the Living Wage in respect of that work; (b) where an increase to the Living Wage is officially announced, pay Eligible Employees the increased amount within 6 (six) months of the official announcement; and (c) notify Eligible Employees of the date of the next increase to the Living Wage within 1 (one) month of the official announcement, unless such Eligible Employees have been previously notified about the date on which they will receive at least the increase

#### 15. SUPPLIER PERSONNEL

- 15.1 The Supplier shall procure that its employees, workers, approved sub-contractors or agents (“**Supplier Personnel**”) attending an Aviva Site or a third party’s site in connection with the Contract comply with: (a) any reasonable directions or instructions given to them; and (b) any applicable security, health and safety or other notices, laws and regulations.
- 15.2 The Supplier shall: (a) be solely responsible for all matters arising out of any contract of employment or engagement for Supplier Personnel and warrant that the Supplier has properly assessed the employment status of all Supplier Personnel and where they are assessed to be employees that the Supplier has accounted for (and paid where applicable) all tax and national insurance liabilities; and (b) not do (or omit to do) anything which could or could be expected to imply an employment relationship between the Purchaser and such Supplier Personnel. The Supplier shall indemnify and hold harmless the Purchaser against any Loss including any employer or employee tax or national insurance liabilities which the Purchaser may suffer as a result of any claim or threatened claim that an employment or other relationship exists between the Purchaser and the Supplier Personnel or arising out of the Suppliers failure to comply with these Clauses 16.1 and 16.2.
- 15.3 Without limiting Clauses 16.1 and 16.2, the Supplier shall indemnify the Purchaser against all Loss suffered by the Purchaser, either directly or under an agreement with a successor supplier of the Services/Works to the Purchaser or which otherwise arise out of or in connection with: (a) any breach of Regulation 13 (duty to inform and consult representatives) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (“**TUPE**”); (b) any actual or alleged act or omission by the Supplier of any of its obligations or liabilities, or any other event occurring prior to the termination of the Contract, in relation to Supplier Personnel; and (c) without limitation, any claim for redundancy payment, unfair dismissal compensation or notice monies and expenses or a protective award, in connection with or as a result of any claim or demand by any Supplier Personnel arising directly or indirectly from the termination or expiry (in whole or in part) of the Contract or reduction in supply of any of the Services/Works or directly or indirectly from TUPE.

#### 16. GENERAL

- 16.1 Neither party shall be liable for a failure to perform arising from any causes or events beyond its reasonable control. In the event of a failure by the Supplier to perform arising under this Clause 17.1, Purchaser shall be entitled to obtain Goods and/or Services from elsewhere for the duration of such failure and to reduce the quantity or amount of Goods and/or Services ordered from the Supplier under a PO.
- 16.2 The Supplier is not appointed, by entering into this Contract, as sole or exclusive supplier to Purchaser or to the Purchaser Group and, to the extent not stated in the PO, Purchaser makes no promises as to any of volume of services, revenue or profits to be expected by the Supplier.
- 16.3 These Conditions do not create a contract of employment, a partnership or a joint venture relationship between the parties nor will either party act as agent of the other except where previously agreed in writing and required for the performance of the Contract.
- 16.4 The Purchasers entire liability to the Supplier pursuant to they Contract, shall be the charges for the Goods, Works and/or Services to be provided as set out in the relevant PO together with any interest due pursuant to Clause 3.4.
- 16.5 Each right or remedy of the either party under the Contract is without prejudice to any other rights or remedies available to that party under this Contract or otherwise.

- 16.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.7 Any notice in connection with the Contract shall be delivered as follows:  
To the Purchaser: to commercial.outsourcingnotices@aviva.com unless the Purchaser notifies the Supplier otherwise. Notices sent to this address will be deemed received on the next working day following a delivery receipt from the above email address. If the Supplier does not receive a delivery receipt within one hour of sending, then the notice will be deemed undelivered and the Supplier should deliver the notice between 09h00 and 17h30 by hand or recorded delivery to Group Legal, St Helens, 1 Undershaft, London, EC3P 3DQ. All notices must state the PO number.  
To the Supplier: to the email address specified by the Supplier on the PO unless the Supplier notifies the Purchaser otherwise or such other address as the Supplier may notify the Purchaser in writing.
- 16.8 References to any statute or statutory provision includes (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 16.9 Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.10 The Supplier shall furnish the Purchaser with such information as may be necessary in relation to the use, operation or maintenance of the Goods, Works and/or Services including, without limitation, instruction manuals and maintenance handbooks.
- 16.11 Where the Contract is a construction contract within the meaning of the HGCRA, either party may refer any dispute or difference under the Contract to adjudication at any time, in which case the Scheme for Construction Contracts (England and Wales) Regulations 1998 (including any amendments thereto) shall apply.
- 16.12 The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **SCHEDULE 1: DATA PROTECTION & SECURITY**

### **Part A – Data Protection**

1. In this Schedule (Part A) the following definitions shall apply:

**“DP Laws”** means the EU Data Protection Directive 95/46/EC as implemented in the appropriate local territories of the European Union until 25 May 2018 (the “GDPR Date”) and the General Data Protection Regulation (EU) 2016/679 (“GDPR”) on and from the GDPR Date (as amended and superseded from time to time), and/or all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, in each case in each jurisdiction where the Services are delivered in relation to data privacy.

**“Process/Processing”, “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Special Categories of Personal Data”** have the same meaning as in the DP Laws.

**“Supervisory Authority”** means: (a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of DP Laws.

2. If Supplier processes any Personal Data on behalf of the Purchaser, it shall not: (a) Process Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than in accordance with the Purchaser’s prior written instructions unless Processing is required by any applicable law, in which case Supplier shall, to the extent permitted by such law, inform the Purchaser of that legal requirement before Processing that Personal Data; (b) disclose any Personal Data to any third party (including the Data Subject) unless directed to do so in writing by the Purchaser; (c) authorise any sub-contractor to process the Personal Data (“**sub-processor**”) other than with the prior written consent of the Purchaser, provided that in the case of each approved sub-processor, Supplier shall: (i) provide the Purchaser with full details of the Processing to be undertaken by the relevant sub-processor; (ii) include terms in the contract between Supplier and each sub-processor (“**Sub-processor Contract**”) which are substantially the same as those set out in this Schedule; (iii); and (iv) remain fully liable to the Purchaser for any failure of a sub-processor to fulfil its obligations in relation to the Processing of any Personal Data.

3. Supplier shall implement the measures in Part B of this Schedule (which may be amended by the Purchaser upon reasonable notice to the Supplier) to ensure a level of security appropriate to the risk and take all measures required pursuant to Article 32 GDPR. Without limiting the foregoing, Supplier shall implement and maintain each of the T&OM set out and referred to in these Conditions.

4. Supplier shall take reasonable steps to ensure the reliability of any person who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary for the purposes set out in paragraph 2 in the context of that individual's duties to Supplier, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

5. Supplier shall promptly notify the Purchaser if it receives a request from a Data Subject under any DP Laws. Supplier shall reasonably assist the Purchaser to enable the Purchaser to comply with the exercise of such rights by a Data Subject and/or to comply with any assessment, enquiry, notice or investigation under any DP Laws in respect of the Personal Data.

6. Supplier shall notify the Purchaser without undue delay, upon becoming aware of a Personal Data Breach (a “**PDB**”) by providing the Purchaser with sufficient information to meet any obligations to report a PDB under the DP Laws.

7. Supplier shall co-operate with the Purchaser and take such reasonable commercial steps as are directed by the Purchaser to assist in the investigation, mitigation and remediation of each PDB. In the event of a PDB, Supplier shall: (a) not inform any third party without first obtaining the Purchaser’s prior written consent, unless notification is required by any applicable law, in which case notification shall be given to the extent permitted by such law; and (b) provide a copy of the proposed notification and consider any comments made by the purchaser before notifying the PDB.

8. Supplier will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Purchaser’s auditors in order to ascertain compliance with the DP Laws and the terms of this Schedule. Supplier shall provide full co-operation to the Purchaser in respect of any such audit and shall, at the Purchaser’s request, provide the Purchaser with evidence of compliance with its obligations under these Conditions. Supplier shall immediately inform the Purchaser if, in its opinion, an instruction pursuant to this paragraph 8 infringes relevant DP Laws.

9. Supplier shall provide reasonable assistance to the Purchaser with any data protection impact assessments which are required under Article 35 GDPR and with any prior consultations to any Supervisory Authority which are required under

Article 36 GDPR, in each case solely in relation to Processing of the Personal Data by Supplier on behalf of the Purchaser and taking into account the nature of the Processing and information available to Supplier.

10. Supplier shall not (and shall procure that its sub-processors shall not) under any circumstances transfer Personal Data outside the EEA unless authorised in writing by the Purchaser to do so (in which case the Supplier shall follow any reasonable instructions of the Purchaser).

11. Supplier shall cease Processing, as soon as reasonably practicable and in any event within 30 days, upon the termination or expiry of these Conditions (or, if sooner, the Service to which it relates) and as soon as possible thereafter, either return or securely wipe from its systems the Personal Data and any copies of it or of the information it contains.

12. The subject matter, and the purpose, of Processing herein is the provision of the Services. The nature of the Processing shall be the operations necessary to enable Supplier to provide the Services. This Processing may be in relation to the Purchaser customers and/or employees and may include names, contact details, dates of birth, ID numbers, usernames, passwords and logon data, as well as Special Categories of Personal Data. The Purchaser’s obligations and rights, as Data Controller, are as set out in these Conditions. The Purchaser reserves the right to amend this Schedule at any time by written notice if necessary to comply with DP Laws or guidance from a Supervisory Authority, or if required to take account of any changes to the Processing of Personal Data pursuant to these Conditions .

### **Part B – Security**

1. In this Schedule (Part A) the following definitions shall apply:

**Assets** means Purchaser personnel, Data or Relevant Infrastructure.

**Customer Data** means information relating to the Purchaser’s customers (or those of any Purchaser Group company).

**Data** means all data (including but not limited to Customer Data), information, text, tables, drawings, codes, diagrams, images or sounds which are embodied in any electronic or tangible medium, including compilations of any of the foregoing, and which are:

- (a) processed by, or a product of, the activities under the Contract;
- (b) generated by the Supplier or a sub-contractor of the Supplier in carrying out the Supplier’s obligations under the Contract; or
- (c) generated by or on behalf of the Purchaser (or those of any Purchaser Group company).

**Good Industry Practice** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

**Incident** means any event where there is, or potentially could be, unauthorised access to, or use of, or interface with any Assets or Systems.

**Public Cloud Services** means any data hosting, processing or storage service which is provided to the Supplier by a third party, where the service is provided on infrastructure owned and located at the third party’s premises, and the service is made available over the internet using infrastructure shared amongst customers.

**Purchaser Infrastructure** means the infrastructure of the Purchaser or any Purchaser Group company to which the Supplier or any of the Supplier’s sub-contractors has access in the course of the Contract.

**Systems** means the systems of the Purchaser (or those of any Purchaser Group company).

**Relevant Infrastructure** means: (a) Purchaser Infrastructure; and (b) Supplier Infrastructure.

**Supplier Infrastructure** means the infrastructure used in the course of the Contract whether the infrastructure of the Supplier or any of the Supplier’s sub-contractors.

## **2. INFORMATION SECURITY REQUIREMENTS**

The Supplier shall maintain and implement appropriate security systems, controls, policies and procedures as least as effective at minimising the risk of an information security breach as required by Good Industry Practice.

### **3. INCIDENT MANAGEMENT**

The Supplier will implement a process for the management and reporting of actual or suspected Incidents which includes: (i) communication to all relevant persons in order to promote prompt reporting and control of any suspected, attempted or actual security breaches; and (ii) notification to the Purchaser with details of the Incident and its potential impact. The Supplier will promptly make the Purchaser aware of the remediation being instigated by the Supplier in order to resolve any Incident impacting the Purchaser.

### **4. ACCESS MANAGEMENT**

The Supplier shall: (a) maintain and implement appropriate security systems, controls, policies and procedures to ensure the secure use of (and protected access

to) all applications, databases and devices used to service the Purchasers businesses;  
(b) ensure that access to any applications, databases or devices used pursuant to the Contract is: (i) only granted to those Supplier personnel who reasonably need it for the purposes of the Contract; and (ii) restricted in accordance with the role or function of the individual; and (c) ensure that adequate procedures are in place so that Supplier personnel access is: (i) added, modified and deleted in a timely manner; and (ii) routinely reviewed for recertification and revalidation purposes.

**5. REMOTE ACCESS SECURITY**

The Supplier shall ensure that controls are in place to prevent unauthorised remote access, including (but not limited to): (i) using strong authentication (e.g. two-factor authentication) to authenticate the Supplier's users; (ii) encryption from the end-point (e.g. laptop) to the network for all data travelling across a remote access mechanism; and (iii) logging of all remote access attempts and reviewing of any suspicious activity.

**6. PORTABLE STORAGE DEVICE SECURITY**

The Supplier shall not store Data on unencrypted portable storage devices. Where portable devices do hold Data, the Supplier shall ensure that: (i) they are locked securely away when not in use; (ii) use in public areas is avoided; (iii) the data stored within the device is no more than the minimum required; and (iv) all devices are adequately encrypted and password protected.

**7. DATA TRANSFER SECURITY**

The Supplier shall ensure that all Data sent over the internet either by e-mail or via other internet protocols (e.g. FTP) is: (i) encrypted using at least a 128 bit encryption mechanism; and (ii) only transferred via pre-configured communications with electronic acknowledgement. The Supplier shall ensure that no unapproved transfer technologies are used to communicate Data.

**8. PASSWORD MANAGEMENT**

The Supplier will ensure that: (i) in respect of any passwords used for access to its systems, standard password configuration includes (without limitation): minimum length, complexity, expiry, history, and account lockout following consecutive failed logon attempts; (ii) the aforementioned configuration is implemented at system level and documented within a password management strategy or policy document; (iii) all non-personal IDs are documented (including the purpose of the access); (iv) all staff are made aware of the importance of keeping their passwords confidential.

**9. NETWORK SECURITY**

The Supplier shall perform regular: (i) anti-virus and perimeter scanning activities on its IT estate which include firewall and email scanning services; and (ii) patch management activity in accordance with Good Industry Practice.

**10. PHYSICAL SECURITY MANAGEMENT**

The Supplier shall ensure that appropriate controls are in place at its premises and any other premises used in the performance of the Contract to prevent unauthorised physical access to those premises.

**11. DATA DISPOSAL**

The Supplier shall ensure that any hardcopy Data is shredded (using a cross-cut shredder or incineration) and securely disposed of via an internal disposal mechanism or by using a third party. For IT assets, the Supplier must ensure that any IT assets and electronic media being used to store Data that are no longer required are destroyed by incineration, damaged beyond repair or that the Data is erased using data erasure technology such that Data is erased and not recoverable (and certify to the Purchaser in writing that the foregoing has been done). Upon the expiry or termination of the Contract, the Supplier shall: (a) assist the Purchaser in the return, transfer and/or destruction of all Data from all sources, networks and devices used by the Supplier or any Supplier Company, or any of the Supplier's (or a Supplier Company's) sub-contractors; and (b) ensure that all physical or logical assets, intellectual property and licences are returned, and physical and logical system access to Data or Systems is revoked within timescales agreed with the Purchaser.

**12. PUBLIC CLOUD SERVICES**

The Supplier will not store, host, or process any Data or Confidential information in any Public Cloud Service without the prior written consent of the Purchaser. Subject to the foregoing, the Supplier will provide adequate assurance of the Public Cloud Services provider's security controls by allowing the Purchaser access to any or all of the following: (a) documentation relating to the Supplier's due diligence activity in respect of the Public Cloud Services provider; (b) ISAE 3000, ISAE 3402, SSAE16 or any similar independent SOC II audit of the Public Cloud Services provider; (c) where applicable, details of the scope and certification status of ISO/IEC 27001:2013.