



Cornovii Developments

General Terms and Conditions  
for the Supply

Of

Good, Services and Works



# Cornovii Developments

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In the absence of any specific contract terms, these General Terms and Conditions are incorporated in contracts of all values and types made between Cornovii Developments and a Contractor for the supply of Goods and Services.

## 1 Definitions

1.1 In this document the following words shall have the following meanings:

<b>Agreement</b>	means the Agreement between Cornovii Developments and the Contractor consisting of the Form of Agreement, these General Terms and Conditions and any other documents (or parts thereof) specified in the Form of Agreement
<b>Associated Person</b>	means in respect of Cornovii Developments, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which Cornovii Developments has a shareholding or other ownership interest
<b>Bribery Act</b>	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation
<b>Cornovii Data</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>a) Supplied to the Contractor by or on behalf of the Cornovii; or which the contractor is required to generate, process, store or transmit pursuant to this Agreement: or</li> <li>b) Any Personal Data for which Cornovii is the Data Controller</li> </ul>
<b>Cornovii Software</b>	Software which is owned by or licensed to Cornovii (or its Shareholder) including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;
<b>Cornovii System</b>	Cornovii's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by Cornovii or the Contractor in connection with this Agreement which is owned by or licenced to Cornovii by a third party and which interfaces with the Contractor System or which is necessary for Cornovii to receive the Services;
<b>Cornovii Representative</b>	the representative appointed by Cornovii Developments
<b>Commercially Sensitive Information</b>	comprise the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to Cornovii in writing that, if disclosed by Cornovii, would cause the Contractor commercial disadvantage or material financial loss;
<b>Confidential Information</b>	any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of Cornovii or



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	the Contractor including intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”)
<b>Contractor</b>	means the person, firm or company or any other organisations specified in the Agreement contracting with Cornovii Developments
<b>Contractor Equipment</b>	the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub contractors (but not hired leased or loaned from Cornovii Developments) for the provision of the Services
<b>Contractor Software</b>	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of supplying the Services
<b>Contractor System</b>	the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding Cornovii Developments’ System)
<b>Contractor Personnel</b>	all employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor
<b>Data Controller</b>	means: (i) shall have the meaning given to the term “controller” as set out in Article 4 of the GDPR
<b>Data Processor</b>	means: (i) shall have the meaning given to the term “processor” as set out in Article 4 of the GDPR
<b>Data Protection Legislation</b>	the Data Protection Act 1998, the GDPR, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) Inception of Communications) Regulation 2000 (SI 2000/2699) The Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner
<b>DPA</b>	means the Data Protection Act 1998
<b>Data Subject</b>	means: (i) shall have the meaning given to the term “subject” as set out in Article 4 of the GDPR
<b>EIR</b>	means the Environmental Information Regulations 2004 (as may be amended from time to time)
<b>Exempt Information</b>	means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA
<b>FOIA</b>	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause
<b>FOIA notice</b>	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
<b>Form of Agreement</b>	means the general document to which these General Terms and Conditions are attached or referred to
<b>GDPR</b>	means the General Data Protection Regulation in force in the UK with effect from 25 <sup>th</sup> May 2018
<b>Goods</b>	means all goods specified in the Agreement



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<b>Hazardous Goods</b>	means any solid, liquid or gas that can cause harm to humans and other living organisms due to being radioactive, flammable or explosive irritating or damaging the skin or lungs, interfering with oxygen intake and absorption (asphyxiants), or causing allergic reactions (allergens)
<b>Information</b>	has the meaning given under section 84 of the Freedom of Information Act 2000
<b>Intellectual Property Rights</b>	means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property where ever in the world enforceable
<b>Law</b>	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirement of regulatory body, delegated or subordinate legislation or notice of any regulatory body
<b>Malicious Software</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
<b>Packages</b>	includes bags, cases, cylinders, drums, pallets and other containers
<b>Personal Data</b>	means: shall have the meaning given to the term “personal data” as set out in Article 4 of the GDPR
<b>Personal Data Breach</b>	means: anything which constitutes a “personal data breach” as set out in Article 4 of the GDPR
<b>Price</b>	means the price of the Goods and/ or charges for the Services or Works being provided by the Contractor
<b>Prohibited Act</b>	the following constitute Prohibited Acts: <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by Cornovii Developments a financial advantage or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity</li> <li>(ii) reward that person for improper performance of a relevant function or activity</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with Cornovii Developments; or</li> </ul> </li> <li>(d) defrauding, attempting to defraud or conspiring to defraud Cornovii Developments</li> </ul>
<b>Public Body</b>	As defined in the FOIA 2000
<b>Purchase Order</b>	Means Cornovii Developments official order which encompasses orders written or electronically generated via Cornovii Developments ordering systems and to which these General Terms and Conditions are attached and referred to



# Cornovii Developments

<b>Receiving Party</b>	means a party to this Agreement to whom a Request for Information is made under FOIA and who thereafter has overall conduct of the request and any response
<b>Request for Information</b>	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
<b>Services</b>	means any and all of the services to be provided by the Contractor under this Agreement including those set out in any schedules or service descriptions
<b>Software</b>	Specifically, Written Software, Contractor Software and Third Party Software
<b>Specifically Written Software</b>	any software created by the contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement
<b>Sub-Contract</b>	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Goods, Works and Services, or necessary for the management, direction or control of the Goods, Works or Services or any part thereof
<b>Sub-Contractor</b>	the third parties that enter into a Sub-Contract with the Contractor
<b>Third Party Software</b>	software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services
<b>Working Day</b>	any day other than a Saturday, Sunday or public holiday in England and Wales
<b>Works</b>	means all civil engineering and building works whatever nature to be provided by the Contractor to Cornovii Developments
<b>Writing</b>	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received

- 1.2 Clause and paragraph headings shall not affect the interpretation of these terms and conditions
- 1.3 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any states or any agency of any person
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established
- 1.5 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006  
In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
  - (i) References in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
  - (ii) The reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is the right to appoint or remove members holding a majority of the voting right Words in the singular shall include the plural and vice versa

- 1.6 A reference to one gender shall include a reference to the other genders
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it
- 1.8 A reference to writing or written includes faxes and electronic mail providing the electronic mail is acknowledged and confirmed as being received
- 1.9 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that things to be done
- 1.10 References to clauses are to the clauses of these terms and conditions
- 1.11 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry
- 1.12 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with Cornovii Developments, such conflict or inconsistency shall be resolved in a manner at Cornovii Developments' sole discretion

## **2 General**

- 2.1 When requested, the Contractor shall specify the Goods, Services or Works to be provided at the price payable.
- 2.2 No variation of these General Terms and Conditions shall be binding unless agreed expressly in Writing by both Cornovii Developments and the Contractor.
- 2.3 These General Terms and Conditions shall apply to the exclusion of any other terms or conditions submitted, proposed or stipulated by the Contractor, whether in writing or orally, and any such other term or condition is hereby expressed excluded or waived.
- 2.4 The Contractor shall complete the Works and Services within the agreed times but time shall not be of the essence in the performance of any services unless expressly stated in Writing by Cornovii Developments.
- 2.5 The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriate authorised representative of the Contractor shall attend a meeting of Cornovii Developments upon being invited to do so.



### **3 Specification and Quality of the Goods, Services and Works**

- 3.1 The quantity, quality and description of the Goods or Services shall comply in all respects with any quoted British Standards and the specification or illustration contained in any product pamphlet or other sales or marketing literature of the Contractor or drawings samples and patterns specified in the Agreement or any modification thereof that may be agreed by Cornovii Developments in writing.
- 3.2 All Goods will be of good construction, sound material, and of adequate strength, shall be free of defects in design materials and workmanship, and shall comply with the requirements of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, as applicable to this Agreement and as amended by any related statutes, and any statutory re-enactment(s) or modifications(s) thereof

### **4 Alterations to the Specification of Goods and Services**

- 4.1 The parties may at any time mutually agree upon and execute alterations in the scope of Goods, Works or Services to be provided under this Agreement.
- 4.2 On receipt of a request from Cornovii Developments for alterations the Contractor shall, within 5 working days or such other period as may be agreed between the parties, advise Cornovii Developments by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 4.3 Where the Contractor gives written notice to Cornovii Developments agreeing to perform any alterations on terms different to those already agreed between the parties, Cornovii Developments shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Contractor by notice in writing whether or not it wishes the alterations to proceed thereafter the Contractor shall perform this Agreement upon the basis of such amended terms.

### **5 Price and Payment**

- 5.1 The price for the supply of Goods and Services are as set out in the Agreement and the Contractor shall invoice Cornovii Developments on completion of sale,
- 5.2 Cornovii Developments reserves the right to set off against the price of the Goods or Services any sums owed or becoming due to Cornovii Developments from the Contractor.
- 5.3 Provided that a nominated employee or authorised signatory of Cornovii Developments has signed for Goods or Services Cornovii Developments will make payment to the Contractor within 30 days following receipt of the relevant undisputed invoices or acceptance of relevant Goods or Services.
- 5.4 VAT, where applicable, shall be shown separately on all invoices as a strictly net extra, the Invoice must comply with VAT rules and regulations.
- 5.5 Cornovii Developments reserves the right to refuse payment of sums invoiced in excess of the prices stated in the Agreement.
- 5.6 Unless otherwise agreed in writing by Cornovii Developments the Contractor will pay any of its appointed sub-contractors within 30 days from receipt of an undisputed invoice.



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## **6 Delivery**

- 6.1 The Agreement will specify the quantity of Goods and the nature of the services required and the date or dates and place of delivery of the Goods or provision of the Service or Services. The Contractor shall provide such programmes of manufacture and delivery as Cornovii Developments may require. Each delivery or consignment shall have a packing note quoting the reference number of the Purchase Order (where applicable) prominently displayed, and Cornovii Developments may reject quantities delivered in excess of those stated on the Agreement.
- 6.2 If Goods are in any respect incorrectly delivered the Contractor shall immediately affect correct delivery and shall be responsible for any additional costs or expenses incurred by both parties in so doing.
- 6.3 If Services are provided by the Contractor otherwise than in accordance with the terms of the Agreement, the Contractor shall immediately affect correct provision of the Services and shall be responsible for any additional costs or expenses incurred by both parties in doing so.
- 6.4 Cornovii Developments may reject any Goods which are not in accordance with the terms of the Agreement and Cornovii Developments shall not be treated as having accepted any Goods, until it has had time to inspect them following delivery or, if later, within a reasonable time after a latent defect in the Goods has become apparent.
- 6.5 The Contractor shall comply with all applicable regulations or other legal requirements as regards the manufacture, packaging, labelling and delivery of the Goods. The Contractor shall deliver the Goods properly and securely packed and supply the Services during Cornovii Developments' usual business hours or in accordance with the instructions shown on the Agreement
- 6.6 Where Goods are delivered by road vehicle, available empty packages may be returned by the same vehicle.
- 6.7 Where Cornovii Developments has an option to return packages and does so, Cornovii Developments will return such packages empty and in good order and condition (consigned 'carriage paid' unless otherwise agreed) to the Contractor's supplying works or depot indicated by the Contractor and will advise the Contractor of the date of despatch.
- 6.8 Packages and containers of all kinds are supplied free by the Contractor and are non-returnable unless otherwise clearly stated, in the first instance, on quotations and subsequently on all packages, advice notes and delivery notes.

## **7 Loss or Damage in Transit**

- 7.1 The Contractor shall promptly make good, free of charge to Cornovii Developments, any loss in transit of the goods if notified within 21 days of delivery or any damage to or defect in the goods if notified within 10 days of delivery



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## **8 Inspection**

- 8.1 The Contractor shall be responsible for the inspection and testing of the Goods and shall use reasonable endeavours to ensure that they comply with the Agreement prior to delivery to Cornovii Developments. Cornovii Developments have the right to inspect the Goods at the Contractor's works and those of its Sub-Contractors at all reasonable times and to reject any part thereof that does not comply with the terms of the Agreement.
- 8.2 The Contractor shall use reasonable endeavours to ensure that rights of access, inspection and rejection at premises of any sub-contractor of the Contractor are given to Cornovii Developments in sub-agreements between the Contractor and the Contractor's Sub-Contractors. Any inspection, checking, approval or acceptance given on behalf of Cornovii Developments shall not relieve the Contractor or its Sub-Contractor from any obligations or liabilities set forth in this Agreement.

## **9 Rejection**

- 9.1 Cornovii Developments shall have the right to reject any Goods or Services which do not comply with the Agreement, and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for purpose for which they are required or non-compliant with a description or specification or sample, and Cornovii Developments may return such rejected Goods to the Contractor at the Contractor's cost and expense.
- 9.2 If the Contractor is unable to supply acceptable replacement Goods or Services within the time specified in the Agreement, or within any extension of such time as Cornovii Developments may grant, it will be entitled to purchase elsewhere other Goods and Services, as near as is practicable to the same Agreement specifications as circumstances shall permit, but without prejudice to any other right which Cornovii Developments may have against the Contractor including, but not limited to, payment by the Contractor of any excess costs incurred by Cornovii Developments in doing so.
- 9.3 The making of such payment shall not prejudice the Cornovii Developments' right of rejection and the Contractor shall immediately reimburse Cornovii Developments with an amount equal to that paid by Cornovii in respect of the Goods and Services and any applicable taxes. Before exercising the said right elsewhere Cornovii Developments shall give the Contractor reasonable opportunity to replace rejected Goods and Services with Goods and Services that conform to the Agreement.
- 9.4 Cornovii Developments is under no obligation to test or inspect the Goods before or on delivery.

## **10 Title – Passing Property**

- 10.1 Property and risk in the goods will remain with the Contractor until the goods are delivered to the place specified in the Agreement and a nominated employee of Cornovii Developments has signed a delivery note for them, whereupon title will pass to Cornovii Developments, without limitation, constraint or encumbrance
- 10.2 If payment for the goods is made prior to delivery, property in the goods shall pass to Cornovii Developments once payment has been made and the goods have been unconditionally appropriated by Cornovii Developments.
- 10.3 In these circumstances the Contractor will set aside the goods and store them separately from similar goods held at the Contractors premises specified in the Agreement and use reasonable endeavours to ensure that they are securely, clearly and visibly marked with the wording “Property of Cornovii Developments” so as to identify those goods as having been unconditionally appropriated by Cornovii Developments to whose order they are held.
- 10.4 The Contractor will allow a named representative of Cornovii Developments reasonable accompanied access to its premises specified in the Agreement to verify compliance with clause 10.3 herein and will immediately rectify any non-compliance as identified by Cornovii Developments’ named representative.
- 10.5 The Contractor will indemnify Cornovii Developments for any loss of or damage to the goods until delivered on-site.
- 10.6 Without prejudice to this indemnity the Contractor will have appropriate and adequate insurance cover against any such loss or damage with a reputable insurer from the time that title in the materials or goods passes to Cornovii Developments until they are delivered on-site and the Contractor shall provide Cornovii Developments with certified copies of the relevant policy upon request.
- 10.7 The Contractor agrees that Cornovii Developments has the right to enter the Contractor’s premises specified in the Agreement where goods are being held in order to recover the said materials or goods in the event of the Contractors insolvency.

## **11 Cornovii Developments’ Obligations**

- 11.1 To enable the Contractor to perform its obligations under this Agreement Cornovii Developments shall:
  - a) Co-operate with the Contractor;
  - b) Provide the Contractor with any information reasonably required by the Contractor;
  - c) Obtain all necessary permissions and consents which may be required before commencement of the Services or the supply of Goods; and
  - d) Comply with such other requirements as may be otherwise agreed between the parties

- 11.2 Without prejudice to any other rights to which the Contractor may be entitled, in the event that Cornovii Developments unlawfully terminates or cancels the Goods and Services agreed to in the Agreement Cornovii Developments shall be required to pay the Contractor as agreed damages and not as a penalty the full amount of any third party costs to which the Contractor has reasonably committed and in respect of cancellations on less than five working days' written notice the full amount of the Goods and Services.

## **12 Warranties**

- 12.1 The Contractor warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality confirming to generally accepted industry standards and practices.

## **13 Indemnification**

- 13.1 Cornovii Developments shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from Cornovii Developments breach of any of its obligations under this Agreement.
- 13.2 The Contractor shall indemnify Cornovii Developments against all reasonable damage, liability, costs, claims, actions and proceedings arising out of the performance, defective performance or otherwise of this Agreement by the Contractor, its employees or agents.

## **14 Termination and Cancellation**

- 14.1 Cornovii Developments upon giving the Contractor notice in writing may cancel any Agreement at any time. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to, and/or performed for Cornovii Developments and is accepted as described in Clauses 6 to 9 herein. Cornovii Developments' liability is strictly limited to work in progress and no further loss or liability will accrue.
- 14.2 Either party may terminate this Agreement forthwith by notice in writing to the other if:
- a) The other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement
  - b) The other party commits a material breach of this Agreement which cannot be remedied under any circumstances
  - c) The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or court of competent jurisdiction makes an order to that effect
  - d) The other party ceases to carry on its business or substantially the whole of its business or
  - e) The other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or liquidators, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.



## 15 Prevention of Bribery

### 15.1 The Contractor:

- a) Shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- b) Warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by Cornovii Developments or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed to Cornovii Developments before execution of this agreement

### 15.2 The Contractor shall:

- a) If requested, provide Cornovii Developments with any reasonable assistance, at Cornovii Developments reasonable cost, to enable Cornovii Developments to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) The contractor shall, within 10 Working Days of a request from Cornovii Developments, certify to Cornovii Developments in writing (such certification to be signed by an officer of the Contractor) the Contractor's compliance with this clause 15 and provide such supporting evidence of compliance with this clause 15 by the Contractor as Cornovii Developments may reasonably request.

15.3 If any breach of clause 15.1 is suspected or known, the Contractor must notify Cornovii Developments immediately

15.4 If the Contractor notifies Cornovii Developments that it suspects or knows that there may be a breach of clause 15.1 the Contractor must respond promptly to Cornovii Developments enquiries, cooperate with any investigation, and allow Cornovii Developments to audit books, records and any other relevant documentation. This obligation shall continue for two years following expiry or termination of this Agreement.

15.5 Cornovii Developments may terminate this Agreement by written notice with immediate effect, and recover from the Contractor the amount of any loss directly resulting from the cancellation, if the Contractor or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 15.1. At Cornovii Developments' absolute discretion, in determining whether to exercise the right of termination under this clause 15.5, Cornovii Developments shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, sub-contractor or supplier not acting independently of the Contractor. The expression "not acting independently" (when used in relation to the Contractor or a Sub-contractor) means and shall be construed as acting:

- a) With the authority; or
- b) With the actual knowledge;  
of any one or more of the directors of the Contractor or the Sub-contractor (as the case may be); or
- c) In circumstances where any one of more of the directors of the Contractor ought reasonably to have had known



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- 15.6 Any notice of termination under clause 15.5 must specify:
- The nature of the Prohibited Act
  - The identity of the Party whom Cornovii Developments believes has committed the Prohibited Act;  
And
  - The date on which this Agreement will terminate
- 15.7 Despite clause 42 (Disputes), any disputes relating to:
- The interpretation of clause 15; or
  - The amount of value of gift, consideration or commission, shall be determined by Cornovii Developments and its decision shall be final and conclusive
- 15.8 Any termination under clause 15.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to Cornovii Developments

## **16 Intellectual Property Rights**

- 16.1 Any specification, drawing, sample and pattern supplied by Cornovii Developments to the Contractor, or specifically produced by the Contractor for Cornovii Developments in connection with this Agreement, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of Cornovii Developments. On payment of the price and for no further consideration the Contractor assigns to Cornovii Developments with full title guarantee all such copyright, design and other intellectual property rights.
- 16.2 The Contractor shall not disclose to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) or provide any such specification, drawing, sample or pattern to any third party or to use the same except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as is required for the purposes of the Agreement.
- 16.3 The provision shall survive the expiration or termination of the Agreement

## **17 Independent Contractors**

- 17.1 The Contractor and Cornovii Developments are independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed in writing by both parties.

## **18 Severability**

- 18.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed, and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or enforceable provision eliminated.

## **19 Assignment, Transfer and Sub-Contracting**

19.1 Cornovii Developments may, subject to clause 19.2:

- a) Assign any of its rights under the Agreement; or
- b) Transfer all of its rights or obligations by novation, to another person

19.2 The consent of the Contractor is required for an assignment or transfer by Cornovii Developments unless:

- a) The assignment or transfer is to an Associated Person of Cornovii Developments; or
- b) Either Cornovii Developments or the Contractor have committed a breach of this Agreement which gives the other party the right under the terms of this Agreement to terminate the Agreement

Any consent must not be unreasonably withheld or delayed and if not expressly refused within five working days shall be deemed given.

19.3 The Contractor may not assign any of its rights, or transfer any of its rights or obligations under the Agreement.

19.4 The Contractor will not, without the written consent of Cornovii Developments sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through his own employees and using his own equipment.

19.5 In the event that Cornovii Developments has consented to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the Contractor to Cornovii Developments immediately it is issued.

19.6 Notwithstanding the Contractor's right to sub-contract pursuant to this clause 19, the Contractor shall remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by the sub-contractor as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

## **20 Waiver**

20.1 The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

## **21 Hazardous Goods**

- 21.1 Hazardous Goods must be marked by the Contractor with the International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Contractor shall observe the requirements of UK and international laws, regulations and agreements relating to the packing, labelling and carriage of hazardous goods.
- 21.2 All information known, held by, or reasonably available to, the Contractor regarding any potential hazards known or believed to exist in transport, handling or use of the goods supplied shall be promptly communicated to Cornovii Developments.



## **22 Notices**

- 22.1 Unless otherwise communicated to the party in writing any notice to be given by either party to use the other may be served by email, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if Cornovii Developments, the Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND
- 22.2 A notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, notice sent by fax shall be deemed to be served on receipt of an error free transmission report, notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged.

## **23 Confidentiality**

- 23.1 All plans, drawings, designs or specifications supplied by Cornovii Developments to the Contractor shall remain the exclusive property of, and shall be returned to Cornovii Developments on completion of the Agreement and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Agreement.
- 23.2 No photographs of any of Cornovii Developments' equipment, installations or property shall be taken without Cornovii Developments' prior consent in writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by Cornovii Developments in connection with this Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement.
- 23.3 The Contractor shall not mention Cornovii Developments' name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communications to third parties without Cornovii Developments' prior consent in writing.
- 23.4 The Contractor will keep confidential any information it become aware of by reason of operation of this Agreement.
- 23.5 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 23.5.1 Treat the other party's confidential information as confidential; and
  - 23.5.2 Not disclose the other party's confidential information to any other person without the owner's prior written consent

23.6 Clause 23.5 shall not apply to the extent that:

23.6.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under FOIA or Environmental Information Regulations pursuant to the above clause regarding Freedom of Information;

23.6.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

23.6.3 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

23.6.4 It is independently developed without access to the other party's confidential information.

23.7 The Contractor may only disclose Cornovii Developments' confidential information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall use reasonable endeavours to ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

23.8 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of Cornovii Developments' confidential information received otherwise than for the purposes of this Agreement.

23.9 Nothing in this Agreement shall prevent Cornovii Developments from disclosing the Contractor's confidential information:

23.9.1 To any consultant, contractor or other person engaged by Cornovii Developments

23.9.2 For the purpose of the examination and certification of Cornovii Developments accounts or any other form of audit of Cornovii Developments

23.10 Cornovii Developments shall use all reasonable endeavours to ensure that any employee, third party or sub-contractor to whom the Contractor's confidential information is disclosed pursuant to this Agreement is made aware of Cornovii Developments' obligations of confidentiality.

23.11 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's confidential information or an infringement of Intellectual Property Rights.

23.12 The provision of this clause shall survive the expiration or termination of this Agreement.

## **23A Agreement Status and Transparency**

23A.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Contractor (the tender submission) is not confidential information. Cornovii Developments shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender submission is exempt from disclosure in accordance with the provisions of the FOIA

23A.2 The Cornovii Developments may consult with the Contractor to inform its decision regarding any exemptions but Cornovii Developments shall have the final decision in its absolute discretion.



# Cornovii Developments

## **24 Cornovii Developments' Data**

- 24.1 The Contractor shall not delete or remove any copyright or proprietary notices contained within or relating to Cornovii Developments' data
- 24.2 The Contractor shall not store, copy, disclose, or use Cornovii Developments' data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by Cornovii Developments and in particular the Contractor shall not store any Cornovii Developments' data, which Cornovii Developments has notified the Contractor requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 24.3 To the extent that Cornovii Developments data is held and/or processed by the Contractor, the Contractor shall supply that Cornovii Developments data to Cornovii Developments as requested by Cornovii Developments in any format specified in this Agreement or if none specified in any format reasonably requested by Cornovii Developments.
- 24.4 The Contractor shall take responsibility for preserving the integrity of Cornovii Developments' data and preventing the corruption or loss of Cornovii Developments data and shall take such backup copies of the data at regular intervals appropriate to the frequency of the revision of Cornovii Developments data.
- 24.5 The Contractor shall use reasonable endeavours to ensure that any system on which the Contractor holds any Cornovii Developments data, including back-up data, is a secure system that complies but is not limited to the following:
  - 24.5.1 Access to the system is restricted to Contractor Personnel with a legitimate need to access Cornovii Developments' data; and
  - 24.5.2 The system is kept up to date with the latest versions of the operating system and anti-virus updates; and
  - 24.5.3 Transfer of data to and from the system is conducted in a secure manner.
- 24.6 If Cornovii Developments' data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, Cornovii Developments may:
  - 24.6.1 Require the Contractor (at the Contractor's expense) to restore or procure the restoration of Cornovii Developments' data as soon as practicable; and/or
  - 24.6.2 Itself restore or procure the restoration of Cornovii Developments' data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so including the restoration of Cornovii Developments' data.
- 24.7 If at any time the Contractor suspects or has reason to believe that Cornovii Developments' data has or may be corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify Cornovii Developments immediately and inform Cornovii Developments of the remedial action the Contractor proposed to take.
- 24.8 The Contractor shall check for and delete Malicious Software and if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Cornovii Developments' data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

24.9 Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause .8 above shall be borne by the parties as follows:

24.9.1 By the Contractor where the Malicious Software originates from the Contractor Software, the Third-Party Software or Cornovii Developments' data (whilst the data was under the control of the contractor); and

24.9.2 By Cornovii Developments if the Malicious Software originates from Cornovii Developments' software or Cornovii Developments data (whilst the data was under the control of Cornovii Developments)

## 25 Protection of Personal Data

25.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that Cornovii Developments is the Data Controller and that the Contractor is the Data Processor.

25.1.1 The Contractor shall (and shall procure that any Sub-contractor and Contractor Personnel involved in the provision of the Services shall):

25.1.2 Process the Personal Data only in accordance with instructions from Cornovii Developments (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by Cornovii Developments to the Contractor during the term of this Agreement):

25.1.3 At all times observe and comply with the Data Protection Legislation and shall comply with any notification requirements under the DPA and the Data Protection Legislation and both Parties shall duly observe all their obligations under the DPA and Data Protection Legislation, which will arise in connection with this Agreement.

25.1.4 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any regulatory Body:

25.1.5 Implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure as required under the Seventh Data Protection Principle in Schedule 1 to the DPA and to enable it to comply with its obligations under Article 32 of GDPR and

- (a) Provide Cornovii Developments with such information as Cornovii Developments may reasonably require to satisfy itself that the Contractor is complying with its obligations under the Data Protection Legislation and DPA;
- (b) Notify Cornovii Developments of any actual or potential Personal Data Breach within twenty-four hours (24) hours of its becoming aware of its occurrence (or, in the case of a potential breach, the Contractor becoming aware of such a breach), along with all supporting facts and information sufficient to allow Cornovii Developments to make any required report(s) to any relevant data subjects, the Information Commissioner or other regulatory or body to which it is subject; and



# Cornovii Developments

- (c) Ensure it does not knowingly or negligently do or omit to do anything which places Cornovii Developments in breach of its obligations under the Data Protection Legislation and will at all times indemnify fully Cornovii Developments from and/or against any cause or action which may be brought against Cornovii Developments consequent to any breach or non-observance of the Data Protection Legislation and DPA by the Contractor, its agents and employees;
- 25.1.6 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 25.1.7 Obtain prior written consent from Cornovii Developments in order to transfer the Personnel Data to any sub-contractors or affiliates for the provision of the services;
- 25.1.8 Ensure that all Contractors Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause;
- 25.1.9 Use reasonable endeavours to ensure that no Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed to do so by Cornovii Developments;
- 25.1.10 Notify Cornovii Developments (within five working days) if it receives:
  - (a) A request from a Data Subject to have access to that person's Personnel Data; or
  - (b) A complaint or request relating to Cornovii Developments' obligations under the Data Protection Legislation;
- 25.1.11 Provide Cornovii Developments with full co-operation and assistance in relation to any complaint made or request made, including by:
  - (a) Providing Cornovii Developments with full details of the complaint or request;
  - (b) Complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with Cornovii Developments' instructions;
  - (c) Providing Cornovii Developments with any Personal Data it holds in relation to a Data Subject (within the timescales required by Cornovii Developments); and
  - (d) Providing Cornovii Developments with any information requested by Cornovii Developments;



# Cornovii Developments

- 25.1.12 Permit Cornovii Developments (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the Audit Clause, the Contractor's data Processing activities (and those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by Cornovii Developments to enable Cornovii Developments to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;
- 25.1.13 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within timescales required by Cornovii Developments); and
- 25.1.14 Not process Personal Data outside the United Kingdom without the prior written consent of Cornovii Developments and, where Cornovii Developments consents to a transfer, to comply with:
- (a) The obligations of a Data Controller under the Eight Data Protection Principle set out in Schedule 1 or the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - (b) By any reasonable instructions notified to it by Cornovii Developments
- 25.1.15 The Contractor shall use reasonable endeavours to ensure that its employees and agents are aware of and comply with this clause and shall indemnify Cornovii Developments against any loss or damage sustained or incurred as a result of any breach of this clause.

## 25B Data Protection

- 25B.1 In interpreting this clause the words and expressions set out below shall have the following meanings and any other words and expressions used are as defined elsewhere in this Agreement:
- (a) Data Protection Legislation:** (i) the General Data Protection Regulation (EU 2016/679) and Law Enforcement Directive (Directive (EU) 2016/680) for as long as it is directly applicable in the UK and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; (ii) any successor legislation to the GDPR or the Data Protection Act 1998; (iii) all applicable Law about the processing of personal data and privacy.
  - (b) Controller, Processor, Data Subject, Personal Data Breach, Data Protection Officer,** shall have the meaning given in the GDPR:
  - (c) Data Loss Event:** any event that results, or may result, in unauthorised access to, or unauthorised or unlawful processing of, Personal Data held by the Contractor under this Agreement, and /or actual or potential loss and/or damage to or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
  - (d) Data Protection Impact Assessment:** as assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
  - (e) Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.



# Cornovii Developments

- (f) **Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- (g) **Sub-processor:** any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement

- 25B.2** Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner Office. This clause 25B.2 is in addition to, and does not relieve, remove or replace, a party's obligation under the Data Protection Legislation.
- 25B.3** The parties acknowledge that for the purposes of the Data Protection Legislation, Cornovii Developments is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is as set out in the Agreement which includes, the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 25B.4** The Contractor shall notify Cornovii Developments immediately if it considers that any of Cornovii Developments instructions infringe the Data Protection Legislation.
- 25B.5** The Contractor shall provide all reasonable assistance to Cornovii Developments in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of Cornovii Developments, include:
- (a) A systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) An assessment of the necessity and proportionality of the processing operations and the purpose of the processing;
  - (c) An assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 25B.6** Without prejudice to the generality of clause 25B.2, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
- (a) Process that Personal Data only in accordance with the written instructions of Cornovii Developments unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify Cornovii Developments before processing the Personal Data prohibited by Law;

- (b)** Use reasonable endeavours to ensure that it has in place Protective Measures, reviewed and approved by Cornovii Developments as appropriate, to protect against a Data Loss Event having taken into account of the:
  - (i) The nature of the data to be protected
  - (ii) the harm that might result from a Data Loss Event
  - (iii) the state of technological development; and
  - (iv) the cost of implementing any Protective Measures;
- (c)** Take reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data;
- (d)** Use reasonable endeavours to ensure that all personnel who have access to and/or process Personal Data;
  - (i) do not process Personal Data except in accordance with this Agreement;
  - (ii) disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Cornovii Developments or as otherwise permitted by this Agreement;
  - (iii) are obliged to keep the Personal Data Confidential; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (e)** Not transfer any Personal Data outside of the European Union unless the prior written consent of Cornovii Developments has been obtained and following conditions are fulfilled:
  - (i) Cornovii Developments or the contractor has provided appropriate safeguards in relation to the transfer as determined by Cornovii Developments;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Contractor complies with reasonable instructions notified to it in advance by Cornovii Developments with the processing of the Personal Data;
- (f)** At the written discretion of Cornovii Developments, delete or return Personal Data and copies thereof to Cornovii Developments on termination of the agreement unless required by Law to retain the Personal Data; and
- (g)** Maintain complete and accurate records and information to demonstrate its compliance with this clause 25B.6 and allow for audits by Cornovii Developments or its designated auditor.



# Cornovii Developments

**25B.7** The Contractor shall notify Cornovii Developments immediately if it:

- (a) Receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (c) Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (d) Receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (e) Becomes aware of a Data Loss Event

**25B.8** Taking into account the nature of the processing, the Contractor shall provide Cornovii Developments with full assistance in relation to either Party's obligation under Data Protection Legislation and any complaint, communication or request made under clause 25B.6 (and insofar as possible within the timescales reasonably required by Cornovii Developments) including by promptly providing:

- (a) Cornovii Developments with full details and copies of the complaint, communication or request;
- (b) Such assistance as is reasonably requested by Cornovii Developments to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) Cornovii Developments, as its request, with any Personal Data it holds in relation to a Data Subject
- (d) Assistance as requested by Cornovii Developments following any Data Loss Event;
- (e) Assistance as requested by Cornovii Developments with respect to any request from the Information Commissioner's Office or any consultation by Cornovii Developments with the Information Commissioner's Office.

**25B.9** The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) Cornovii Developments determines that the processing is not occasional;
- (b) Cornovii Developments determines the processing includes special category of data as referred to in Article 9(1) of the GDPR; and
- (c) Cornovii Developments determines that the processing is likely to result in a risk to rights and freedoms of Data Subjects

**25B.10** The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

**25B.11** Before allowing any sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) Notify Cornovii Developments in writing of the intended sub-processor and processing;
- (b) Obtain the written consent of Cornovii Developments;
- (c) Enter into a written agreement with the sub-processor which give effect to the terms set out in this clause 25B such that they apply to the sub-processor; and
- (d) Provide Cornovii Developments with such information regarding the sub-processor as Cornovii Developments may reasonably require.

**25B.12** The Contractor shall remain fully liable for all acts or omissions of any sub-processors.

**25B.13** Notwithstanding any other provision of this Agreement, the Contractor agrees to indemnify and keep indemnified Cornovii Developments against all reasonable costs, claims, damages or expenses incurred by Cornovii Developments of for which it may become liable due to any defective performance or any failure by the Contractor or its employees or agents to comply with any of its obligations under this Agreement.

**25B.14** Either party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement) or to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **26 Cornovii Data and Personal Information Audits**

- 26.1** Except where an audit is imposed on Cornovii Developments by a Regulatory body, Cornovii Developments may acting reasonably, conduct an audit for the following purposes:
- 26.1.1 To review the integrity, confidentiality and security of Cornovii Developments data
  - 26.1.2 To review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services;
- 26.2 Cornovii Developments shall use all reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of Services.
- 26.3 Subject to Cornovii Developments' obligations of confidentiality, the Contractor shall on demand provide Cornovii Developments (and/ or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 26.3.1 All information requested by Cornovii Developments within the permitted scope of the audit;
  - 26.3.2 Reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the services;
  - 26.3.3 Access to Contractor Personnel
- 26.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the services
- 26.5 Cornovii Developments shall endeavour to (but is not obliged to) provide at least 5 working days notice of its intention to conduct an audit.
- 26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 26.7 This clause shall not apply to any audit or inspection regarding the provision of the services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.



## 27 Insurance

- 27.1 The Contractor shall effect and maintain with an insurance company a policy or policies of insurance providing adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with Cornovii Developments such policy or policies of Public Liability Insurance and Employers Liability Insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS)
- 27.2 If appropriate and requested in writing, the Contractor may also be required to provide Product Liability Insurance of at least £2,000,000 (TWO MILLION POUNDS) cover for any one claim.
- 27.3 Where the Contractor is providing Services of a professional nature, or Cornovii Developments otherwise specifies that professional indemnity insurance is required, the Contractor shall hold and maintain professional indemnity insurance cover and shall use reasonable endeavours to ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the contractor for negligent acts arising out of the performance of this Agreement. To comply with its obligations under this clause, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and any agent, Sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in respect of each and every claim.
- 27.4 The Contractor shall hold and maintain the insurances required under this Agreement for a minimum of 6 years following the expiration or earlier termination of this Agreement.
- 27.5 The Contractor warrants that it has complied with this clause 27 and warrants that any insurance policy or policies effected and maintained in accordance with this clause do not contain any endorsements or exclusions which have the effect of voiding, reducing or limiting the cover required in respect of the Services.
- 27.6 The Contractor shall prior to commencement of this Agreement provide Cornovii Developments and thereafter upon request, or at least annually during the Term, with:
- (a) Copies of relevant insurance policy documents (including details of warranties or exclusions):  
and
  - (b) Receipts or other evidence of payment of the latest premiums due under those policies; and
  - (c) Any other evidence reasonably requested by Cornovii Developments to confirm that the required insurances are in force and effect and meet in full the requirements of this Clause 27

Receipt of such evidence by Cornovii Developments shall not itself constitute acceptance by Cornovii Developments or relieve the Contractor of any of its liabilities and obligations under this Agreement.

- 27.7 The Contractor shall:
- (a) Use reasonable endeavours to ensure nothing is done to invalidate any insurance policy or cause the relevant insurer to cancel, rescind or suspend any insurance cover, or to treat any insurance, cover or claim as voided in whole or part, including ensuring that any warranties under the policy are complied with;



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- (b) Notify Cornovii Developments as soon as is reasonably practicable when in becomes aware of any relevant fact, circumstance or matter which, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance or whole or in part.

27.8 For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.

27.9 Where the minimum limit of indemnity required in relation to any of the insurance is specified as being “in the aggregate”

27.9.1 If a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party (ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to Cornovii Developments:

- (i) details of the policy concerned; and
- (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and

27.9.2 If and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall:

(i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or

(ii) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum indemnity specified, immediately submit to Cornovii Developments full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

## **28 Equalities**

- 28.1 The Contractor and any Sub-contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices.
- 28.2 Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof
- 28.3 The Contractor and any Sub-Contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 28.4 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-contractor employed by the Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Contractor shall inform Cornovii Developments of this finding and shall take appropriate steps to prevent the unlawful discrimination.
- 28.5 The Contractor and any Sub-contractor employed by the Contractor will provide a copy of its policies to Cornovii Developments at any time upon request. In addition, Cornovii Developments may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

## **29 Human Rights**

29.1 The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.

## **30 Health and Safety at Work**

30.1 The Contractor will at all times in providing Goods, Services or Works to Cornovii Developments comply with the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to Cornovii Developments at any time upon request.

## **31 Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)**

31.1 The Contractor acknowledges that Cornovii Developments, as wholly owned by Shropshire Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with Cornovii Developments to comply with its information disclosure obligations.

31.2 The Contractor shall notify Cornovii Developments of any Commercially Sensitive Information provided to Cornovii Developments together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that Cornovii Developments may be obliged to disclose such information.

31.3 The Contractor shall and shall procure that its Sub-contractors shall:

31.3.1 Transfer to Cornovii Developments all requests for information that it receives as soon as practicable and in any event within two working days of receiving a request for information;

31.3.2 Provide to Cornovii Developments, at the Contractor's expense, with a copy of all information in its possession, or power in the form from Cornovii Developments requires within five working days (or such other period as Cornovii Developments may specify) of Cornovii Developments' request; and

31.3.3 Provide, at the Contractor's expense, all necessary assistance as reasonably requested by Cornovii Developments to enable it to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

31.4 Cornovii Developments shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information Cornovii Developments may consult with the Contractor prior to making any decision or considering any exemption.

31.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by Cornovii Developments.



# Cornovii Developments

- 31.6 The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) that Cornovii Developments may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 31.6.1 In certain circumstances without consulting the Contractor; or
  - 31.6.2 Following consultation with the Contractor and having taken their views into account; Provided always that where sub-clause 32.6.1 above applies Cornovii Developments shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 31.7 The Contractor shall use reasonable endeavours to ensure that all information required to be produced or maintained under the terms of this Agreement, or by Law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement, law or practice and shall permit Cornovii Developments to inspect such records as requested from time to time.
- 31.8 Cornovii Developments shall in no event be liable for any loss, damage, harm, or detriment howsoever caused arising from or in connection with the reasonable disclosure under FOIA, or any other law, if any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.
- 31.9 Where the Contractor is a Public Body the parties acknowledges that such obligations and duties of Cornovii Developments as set out above are reciprocal to the Contractor. Cornovii Developments and the Contractor acknowledge and agree that:
- 31.9.1 They are both subject to legal duties under FOIA and EIR which may require either part to disclose on request information relating to this Agreement or otherwise relating to the other party;
  - 31.9.2 They are required by law to consider each and every Request for Information made under FOIA;
  - 31.9.3 That all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at discretion of the Receiving Party.
  - 31.9.4 Notwithstanding anything in this Agreement to the contrary (including but without limitations any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not:
    - (a) confirm or deny that information is held by the other party, or
    - (b) disclose the information required

To the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either or the things described in part (a) and (b) of this clause

- 31.9.5 Each party shall bear its own costs of:
- (a) assessing the application of any exemption under FOIA and/or
  - (b) responding to any FOIA notice and/or
  - (c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure
- 31.9.6 The receiving Party shall in no circumstances be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information whether relating to this Agreement or otherwise relating to the other party.
- 31.9.7 The other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA.

## **32 Expiry**

- 32.1 The Contractor will on the expiry or termination of the Agreement and, at its own cost, return (or at the request of Cornovii Developments destroy) all information obtained in undertaking the performance of the Agreement.

## **33 Audit and Monitoring**

- 33.1 The Contractor will allow access for Cornovii Developments to all relevant information for the purposes of audit and the monitoring of the Agreement.

## **34 Rights of Third Parties**

- 34.1 The parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **35 Entire Agreement**

- 35.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreement, arrangements, undertakings or proposals, oral or written.



## **36 Force Majeure**

36.1 Neither Cornovii Developments nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:

36.1.1 Any delay by a Sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

36.1.2 Staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

36.2 If the Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:

36.2.1 It promptly notified Cornovii Developments in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

36.2.2 It has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

In which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

36.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):

36.3.1 Any cost arising from that delay will be borne by the Party incurring the same; and

36.3.2 Either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

## **37 Governing Law and Jurisdiction**

37.1 It is the responsibility of the Contractor to comply with all relevant European and English Legislation. This Agreement shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

## **38 Complaints Procedure**

- 38.1 The Contractor shall operate a complaints procedure in respect of any goods, service or works provided under these terms and conditions, to the entire satisfaction of Cornovii Developments, and comply with the requirements of any regulatory body to which the Contractor is subject (including any changes in such requirements) and ensure that its complaints procedure meets the following minimum standards:
- 38.1.1 Is easy to access and understand
  - 38.1.2 Clearly sets out time limits for responding to complaints and keeping the complainant and Cornovii Developments informed of progress;
  - 38.1.3 Provides confidential record keeping to protect employees under this contract and the complainant
  - 38.1.4 Provides information to management so that services can be improved
  - 38.1.5 Provides effective and suitable remedies
  - 38.1.6 Is regularly monitored and audited and which takes account of complainant and Cornovii feedback
- 38.2 The Contractor shall use reasonable endeavours to ensure that:
- 38.2.1 Under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint
  - 38.2.2 Someone who is independent of the matter complained of carries out the investigation
  - 38.2.3 The complainant is made aware that they are entitled to have the complaint investigated by Cornovii Developments if they are not satisfied with either the process of the investigation or findings of the Contractor's investigations
  - 38.2.4 The Contractor will use reasonable endeavours to ensure that it responds to the complaint within a max of 10 days of receiving the complaint
- 38.3 The Contractor will make its complaints procedure available on request
- 38.4 The Contractor shall use reasonable endeavours to ensure that all its employees and persons employed under this contract are made aware of its complaints procedure and shall designate one employee (who shall be identified to Cornovii Developments) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- 38.5 The Contractor shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to Cornovii Developments on request or at 12 monthly intervals in any event.
- 38.6 Where Cornovii Developments is investigating a complaint, the Contractor is required to participate fully in all investigations within the timescales requested by Cornovii Developments.

## 39 Disputes

39.1 If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:

39.1.1 In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute

39.1.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve **Cornovii Developments' Managing Director** or the Contractor's senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice.