

**Terms and Conditions of Contract**  
**Installation of Multi-Use Games Area,**  
**Mundy Playing Fields, Thornbury**

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## **1. Definitions and Interpretation**

1.1 In these Terms and Conditions of Contract, the following expressions shall have the following meanings:

“Authorised Officer” means person(s) as the Buyer nominates for that purpose to act as the Buyer’s representative

“Buyer” means the procurement/commissioning function of Thornbury Town Council

“Commencement Date” means the date at which the contract requirements begin

“Confidential Information” means information, data and material of any nature which any Party may receive or obtain in connection with the Contract and:

- (1) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); or
- (2) the disclosure of which would or would be likely to prejudice the commercial interests of any Party or any other person and the public interest in maintaining non-disclosure would outweigh the public interest in disclosure; or
- (3) the disclosure of which by the Buyer would constitute a breach of confidence actionable by the Supplier or a third party; or
- (4) which constitutes a trade secret;

“Contract” means the contract between the Buyer and Supplier consisting of the Supplier's tender and the Buyer's acceptance thereof (or the Supplier's acceptance of the Buyer's order for the goods and Services, as the case may be) together with any documents referred to in them, including the Specification and these conditions and any Schedules annexed;

“Contract Price” means the sum payable to the Supplier by the Buyer in respect of the supply of the Goods

“Contract Period” means the period of validity of this contract from the Commencement Date until expiry in accordance with clause 2 below, or until earlier termination.

“Council” means Thornbury Town Council

“Data” shall include any data and/or information howsoever stored which is compiled in relation to the supply of the Services or Goods or part thereof;

“Expiry Date” means the date which is One (1) year after the Commencement Date

“Expert” means the person appointed by the mutual agreement of the Parties, or in accordance with Condition 32 (Dispute Resolution and Expert Determination).

“External Audit” means the independent external audit of the Buyer’s accounts under the Local Audit and Accountability Act 2014 or under the Local Government Act 1999 in relation to Best Value ;

“Force Majeure” means any event or circumstances beyond the reasonable control of either Party and shall include, without limitation:

- (a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
- (b) nuclear, chemical or biological contamination of property arising from any of the events at (a) above
- (c) riot, flood or earthquake; and
- (d) any circumstance beyond the reasonable control of the Parties.

“Goods” means any such goods as are to be supplied to the Buyer by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;

“Insurance” shall include the policies of insurance which the Supplier is obliged to take out and maintain under Condition 15 (Insurance);

“ITT” means the Invitation to Tender

“KPIs” means the indicators (where applicable) by which the Supplier's level of performance of the Services are to be measured as agreed by both parties in the mobilization period

“Management Information” means the data and information relating to the supply of services that the Supplier is to provide to the Council in accordance with the Tender Documents.

“Premises” means the location where the services are to be performed as specified in the Contract or Order.

“Order” means an order made by the Buyer detailing the Services required

“Services” means the services provided as specified in the contract including (but not restricted to) the supply of goods and services and shall, where the context so admits, include any materials, articles and goods to be supplied in connection with any such services;

“Supplier” means the person, firm or company to whom the Contract is issued;

“Working Day” means Monday to Friday excluding bank and public holidays.

“2000 Act” means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;

## **1. Interpretation**

Unless the context requires otherwise, words in the singular may include the plural and vice versa.

Where the Supplier is more than one person those persons shall be jointly and severally liable under the Contract.

Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.

Word importing the masculine gender shall include the feminine gender and vice versa.

The headings in this Contract are for ease of reference only and do not affect its interpretation or construction.

All stipulations of the Contract as to time shall be of the essence (except any stipulations as to the time of payment by the Buyer to the Supplier).

## **2. Contract Period**

- 2.1. This Contract shall commence on the Commencement Date and shall remain in force until the Expiry Date unless extended in accordance with this clause 2 or terminated earlier in accordance with its terms.
- 2.2. Subject to Condition 18 (Termination) the Contract Period shall be for a period of one (1) year taking effect on the Commencement Date.
- 2.3. The Buyer at its sole discretion may extend the Contract Period beyond the Expiry Date by 6 months for the Contract Price by giving the Supplier 1 month's written notice expiring on or before the date the Term would otherwise expire. In any event the total Term shall be for no more than 1 year from the Commencement Date.
- 2.4. The Supplier undertakes that the Commencement Date shall be of the essence and the Supplier irrevocably undertakes to the Buyer that it shall be a condition precedent to the enforceability of this Contract that any preparatory work required to be performed by the Supplier in anticipation of the Commencement Date (including but not limited to the mobilisation of Services, staff and resources) shall be undertaken to the satisfaction of the Buyer at the cost of the Supplier.

## **3. Application of Terms**

- 3.1. The purpose of this Contract is to establish the terms under which the Supplier shall supply to the Buyer Services within an agreed range at agreed prices.
- 3.2. These conditions will govern the Contract between the Buyer and the Supplier to the entire exclusion of all other terms and conditions unless varied by the Parties in writing.

## **4. Services, Quality and Defects**

- 4.1. The Supplier shall ensure that the Services shall:

- 4.1.1. Correspond with their description, the Tender Document specifications and Order, and any variations thereto.

## **5. Observance of Statutory Requirements**

- 5.1. The Supplier shall in all matters arising in the performance of this Contract comply with all Acts of Parliament and with all orders, Regulations, Statutory Instruments and By-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to this Contract and shall indemnify and keep indemnified the Buyer against the consequence of any breach of its obligations under this Condition.
- 5.2. The Supplier's personnel and its staff shall observe any rules applicable to any Establishment or Premises or any other premises they enter including but not limited to the ban on smoking at premises. The Supplier shall not in the performance of this Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public or the occupiers of any such premises.
- 5.3. In the event that the Supplier does not fulfil its responsibilities and obligations under this Condition 5 and the Buyer thereby incurs costs to which it would not otherwise be liable due to any law or any order, regulation or by-law having the force of law, the amount of such costs shall be reimbursed by the Supplier to the Buyer.

## **6. Quality and Environmental Management Systems**

- 6.1. The Supplier shall as from the Commencement Date institute and throughout the Contract Period maintain in relation to the delivery of the Services a system of quality assurance, improvement planning and operation.
- 6.2. The Buyer shall have the right to inspect and/or test the Services.
- 6.3. If as a result of inspection and/or testing of the Services, the Buyer is not satisfied that the Services comply in all respects with the Tender Documents and Order and the terms of this Contract, the Buyer:
  - 6.3.1. may inform the Supplier of their opinion and the Supplier shall take such steps necessary to ensure compliance, or
  - 6.3.2. may cancel the Order and/or terminate the Contract at any time prior to the delivery of the Services, in each case without penalty or other obligation to compensate the Supplier for losses it has and/or may occur.

## **7. Contract Price**

- 7.1. The Price of the Services shall be as stated in the Order and/or the Tender Documents and, unless otherwise so stated, shall be exclusive of any applicable Value Added Tax but inclusive of all other charges including but not limited to those relating to delivery, package, carriage and (where applicable) installation.
- 7.2. The Price of the Services shall be fixed for an initial period from the Commencement Date, as agreed with the Supplier, after which the following shall apply:
  - 7.2.1. The Supplier may request an increase to the Contract Price by contacting the Buyer in writing at least one month prior to the effective date of the proposed increase;
  - 7.2.2. Any price request must be a request for a fixed price applicable for the next

period, at intervals agreed between the Parties (subject to clause 7.3);

7.2.3. Price increases will only be considered if the Supplier can demonstrate to the satisfaction of the Buyer that there has been an increase in the Supplier's costs which justify a price increase;

7.2.4. Price increases will be solely at the discretion of the Buyer.

7.3. The Supplier shall notify the Buyer if there is a reduction in the Suppliers input costs or in the prevailing market for similar Services available from other sources. The Parties shall agree upon a price reduction to be implemented immediately.

7.4. In the event that the Buyer and the Supplier cannot agree on the amount of any price increase or decrease, and the Supplier is not willing to continue supplying the Buyer at the Contract Price before any price increase or decrease was requested, this Contract may be terminated by either Party giving not less than 3 calendar months' notice in writing to the other.

## **8. The Buyer's Authorised Officer**

8.1. The Buyer shall notify the Supplier of the person appointed to be the Authorised Officer (and of any variation of such nominee).

8.2. The function of the Authorised Officer shall be to liaise with and give instructions to the Supplier and its personnel in relation to all matters concerning the performance by the Supplier of its obligations under the Contract and to determine any matters or issue any notices as may be the function of the Authorised Officer under this Contract.

8.3. The Authorised Officer shall have power on behalf of the Buyer to issue instructions and give directions on any matter relating to the performance of the delivery of the Services and exercise the functions and powers of the Buyer under this Contract and the Supplier shall observe and comply with all such instructions or directions, which the Authorised Officer shall use reasonable endeavours to confirm in writing.

## **9. The Supplier's Account Manager**

9.1. The Supplier shall ensure that at all times during the Contract Period there shall be one member of the Supplier's personnel who has been and remains appointed as the Account Manager with authority to represent the Supplier for all purposes including co-ordination of relevant orders and provision of day-to-day support, the identity and contact details of whom shall be notified to the Buyer 14 days prior to the Commencement Date.

9.2. The Account Manager will follow and comply with any instructions or directions given or issued by the Authorised Officer in connection with supply or performance of the Services.

## **10. Complaints**

10.1. The Supplier shall comply with its own complaints procedure, notice of which shall be given to the Buyer and will comply with the Buyer's complaints procedure whenever a complaint is made by any third party directly to the Buyer as the same may be amended and notified to the Supplier from time to time.

10.2. The Supplier shall keep a record in a form approved by the Authorised Officer, of any

complaints received (whether received orally or in writing, and whether from representatives of the Buyer, residents, members of the public or others) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times within the agreed contract review meeting period.

## **11. Continuous improvement and performance review**

- 11.1. The Supplier shall acknowledge that the Buyer has a duty to secure continuous improvements in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness. The Supplier shall throughout the Contract Period shall assist the Buyer by actively promoting, supporting and assisting the Buyer in respect of the Services provided.
- 11.2. Without prejudice to anything contained in the Specification, the Authorised Officer shall at his/her discretion convene regular contract review meetings to promote jointly with the Supplier continuous improvement in the delivery of the Services provided under this Contract.
- 11.3. Working jointly at these meetings, the Buyer's Authorised Officer and the Supplier's Account Manager shall scrutinise and review all aspects of the activities and performance of the Contract and develop and bring forward agreed proposals for achieving such continuous improvements or for preventing failures in the provision of the delivery of the Services.
- 11.4. The Parties will agree and record the changes to be introduced and assign organisational responsibilities for delivering such changes and specify a time scale for both the implementation of any operational improvements and for achievements of such improvements.

## **12. Invoicing and Payment**

- 12.1. Each delivery shall be accompanied by an invoice/delivery note addressed to the Buyer and shall include the Contract Price, the invoice number, and the amount must be stated in pounds sterling (£).
- 12.2. In addition to the requirement under Condition 12.1 above, the Supplier may be required to submit invoices in a format approved by the Buyer.
- 12.3. The Buyer shall pay the Supplier for Services via BACS within 30 days, in accordance with the Specification as notified to the Supplier.
- 12.4. The Supplier shall provide and action any credit notes via the BACS in accordance with the Specification.

## **13. Risk and Property**

- 13.1. The Buyer may reject or report any of the Services which fail to meet the requirements specified in the Order, this Contract and/or the Tender Documents or any other written document upon delivery or within a reasonable time after delivery. If the Buyer rejects any of the Services pursuant to this Condition 13 the Buyer shall be entitled (without prejudice to any other rights and remedies):

13.1.1. to have the Services either replaced by the Supplier with Services which comply in all respects with the requirements specified within twenty-four (24) hours of being notified; or

13.1.2. to obtain a refund from the Supplier

## **14. Anti-Bribery and Anti-Corruption**

14.1. The Supplier shall not offer or give, or agree to give, to any officers or representatives of the Buyer any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Buyer or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any other such contract. The Supplier's attention is drawn to the criminal offences created by the Bribery Act 2010.

14.2. The Buyer may terminate this Contract and recover all its losses if the Supplier (or its personnel):

- 14.2.1. fails to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
- 14.2.2. engages in any activity, practice or conduct which would constitute an offence under, section 1, 2, and 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; or
- 14.2.3. engages in any activity, practice or conduct which would constitute an offence under Section 117(2) of the Local Government Act 1972 and any amendment thereto or any subsequent legislation or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Buyer; or
- 14.2.4. defraud or attempt to defraud or conspire to defraud the Buyer .

## **15. Insurance**

15.1. The Supplier hereby warrants that the Supplier shall have in force all necessary insurance cover for any one occurrence or series of occurrences arising out of the supply of the Services, including public liability with a minimum limit of not less than £10,000,000 and in respect of Employer's Liability at least £10,000,000. The Supplier undertakes to the Buyer to maintain such insurance cover during the Contract Period.

15.2. The Supplier shall before the Commencement Date and annually thereafter and at such times as the Buyer may reasonably require supply the Buyer with certified copies of all insurance policies required by any of the provisions of this Condition 15.

15.3. In the event that the Supplier fails to comply with any of these requirements the Buyer shall be entitled to effect such insurance itself and recover the proper and reasonable costs of so doing from the Supplier together with an administrative charge equal to ten percent (10%) of the total cost of obtaining such insurance (subject to a maximum administrative charge of £500) and interest on the total

outstanding amount at four percent (4%) above the base rate of the Buyer's bank in force from time to time.

## **16. Confidentiality and Publicity**

- 16.1. Subject to Conditions 16.3, 16.6 and 16.8, each Party undertakes to the other Party as follows:
  - 16.1.1. to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly both during the Contract Period and following expiry or termination of the Contract;
  - 16.1.2. not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract; and
  - 16.1.3. not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with this Contract.
- 16.2. The Parties shall use all reasonable endeavours to procure that their personnel employees, agents and sub-Suppliers keep confidential and do not make any disclosure of Confidential Information to any third party in breach of Condition 16.1 above and disclose only such Confidential Information as is required in connection with the performance of the Contract.
- 16.3. Condition 16.1 shall not apply to any disclosure of Confidential Information:
  - 16.3.1. which a Party can demonstrate has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;
  - 16.3.2. which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;
  - 16.3.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 16.3.4. which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - 16.3.5. to enable a determination to be made under the Dispute Resolution Procedure referred to under Condition 32;
  - 16.3.6. by any Party to any department, office or agency of the Government;
  - 16.3.7. which is for the purpose of:
    - (1) the examination and certification of the Buyer's or the Supplier's accounts (including any External Audit of the accounts); or
    - (2) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has utilised its resources;

- 16.3.8. which is independently developed without access to the Confidential Information;
- 16.3.9. by the Buyer to any third party insofar as this may be necessary to the performance or provision by that party of any supply of Services or any Goods or works whatsoever for or to the Buyer ;
- 16.3.10. by the Buyer to an arms-length management organisation relating to the Buyer and further disclosure by the said arms-length management organisation insofar as this is reasonably necessary for the proper discharge of the Buyer 's functions which have been or may be delegated by the Buyer to the arms-length management organisation; or
- 16.3.11. by the Buyer or the arms-length management organisation in monitoring reports to the Buyer's Executive or other member body or to the arms-length management organisation board, sub-boards or committees.

- 16.4. The Supplier shall not make use of this Contract or other information issued or provided by the Buyer in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Buyer.
- 16.5. When the Supplier, in carrying out its obligations under this Contract, is provided with Confidential Information or other information relating to the delivery of the Services the Supplier shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Supplier has sought and obtained the prior written consent of that person or the Buyer .
- 16.6. Nothing in this Condition 16 shall prevent any Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of intellectual property rights.
- 16.7. The Supplier acknowledges to the Buyer that nothing in this Condition 16 shall fetter or affect the Buyer's obligations under the Data Protection Act 1998, the 2000 Act or the Environmental Information Regulations 2004.
- 16.8. Subject to Condition 16.11, the Supplier shall not and shall procure that any member of the Supplier's personnel or sub-Supplier shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Buyer's prior written approval as to its contents and manner and timing of its presentation and publication.
- 16.9. The Supplier shall not and shall procure that any member of the Supplier's personnel shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Buyer.
- 16.10. Any Party may make a public statement or announcement concerning the completion of this Contract if required by:
  - 16.10.1. law; or

16.10.2. any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law provided that any such statement does not contravene the duty of confidentiality contained in Condition 16.1

16.11. Subject to the provisions of Condition 16.1 the Buyer reserves the right to publish or disseminate information about this Contract and the Services as it may deem appropriate from time to time.

## **17. Severance**

17.1. If any provision of this Contract is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

## **18. Termination**

18.1. The Buyer shall be entitled upon the happening of any of the following events to terminate the Contract ("Termination"), without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect.

18.1.1. the Supplier commits a breach of any term of this Contract which breach is capable of being remedied and the Supplier has failed to remedy the said breach within 14 days after issue of a written request from the Buyer that the Supplier should do so;

18.1.2. any material breach by the Supplier of any of its obligations under the Contract;

18.1.3. the Supplier suffering an execution to be levied on his Services;

18.1.4. if the Supplier consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;

18.1.5. if the Supplier consists of a body corporate, the Supplier having a receiver or manager or administrator or provisional liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this clause;

18.1.6. if the Supplier has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;

18.1.7. the Supplier has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;

- 18.1.8. the Supplier is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state;
- 18.1.9. if the Buyer is of the reasonable opinion that the Supplier has abandoned the Contract;
- 18.1.10. if the Supplier has failed, without reasonable excuse, to commence the service on the Commencement Date or has suspended the performance of the service or a substantial part thereof for seven days after receiving from the Authorised Officer written notice to proceed;
- 18.1.11. the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of the Contract with the Buyer; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract , or any other agreement with the Buyer, or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf, (whether with or without the knowledge of the Supplier );
- 18.1.12. if in relation to any agreement with the Buyer, the Supplier or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Legislation.

18.2. Upon such Termination and in addition to such consequences as are set out elsewhere in this Contract :

- 18.2.1. the Supplier shall forthwith cease to deliver any Services;
- 18.2.2. the Supplier shall fully and promptly indemnify the Buyer in respect of the cost of causing to be supplying the Services or any part thereof as would have been performed by the Supplier during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Supplier for performing the Contract . The Buyer shall be at liberty to have the Services supplied or any part thereof performed by any persons (whether or not servants of the Buyer), as the Buyer shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Contract or part thereof performed;
- 18.2.3. the Buyer shall cease to be under any obligation to make further payments to the Supplier and shall be entitled to retain any payments which may have fallen due to the Supplier before termination until the costs, losses and/or damages resulting from or arising out of the Termination of the Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Supplier , the Buyer shall pay the Supplier such sums forthwith and in any event within 10 (ten) Working Days of the calculation being agreed between the Parties;
- 18.2.4. the Buyer shall be entitled to repossess any of its premises, materials, equipment loaned or hired to the Supplier and to exercise lien over any of the materials, equipment or other goods belonging to the Supplier for any sum due hereunder or otherwise due from the Supplier to the Buyer;

- 18.2.5. the Buyer shall be entitled to employ and pay other persons to perform and complete the Service or any part thereof;
- 18.2.6. the Buyer shall be entitled to deduct, retain or set off from any sum or sums which would but for clause 18.2.3 have been due from the Buyer to the Supplier under this Contract or any other Contract or be entitled to recover the same from the Supplier as a debt, any loss or damage to the Buyer resulting from or arising out of the termination of the Contract. Such loss or damage shall include reasonable cost to the Buyer of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof;
- 18.2.7. when the total costs, losses and/or damages resulting from or arising out of the Termination of the Supplier's employment have been calculated and deducted insofar as is practicable from any sum or sums which would but for clause 18.2.3 have been due to the Supplier, any balance shown as due to the Buyer shall be recoverable as a debt, or alternatively, the Buyer shall pay to the Supplier any balance shown as due to the Supplier.

- 18.3. The rights of the Buyer under this clause 18 are in addition to and without prejudice to any other rights the Buyer may have whether against the Supplier directly or pursuant to any guarantee or indemnity.
- 18.4. The Supplier may terminate this Contract by serving notice on the Buyer at least sixty (60) days prior to termination of the Contract if any sums remain unpaid for thirty (30) days after receipt by the Buyer of an invoice for Services previously rendered in accordance with this Contract and the Supplier has given the Buyer prior written notice stating sum(s) remaining unpaid and its intention to terminate the Contract and such sum(s) remain unpaid for thirty (30) days following service of the notice Provided Always that the Supplier shall not exercise this right of termination where the sum(s) outstanding is/are the subject of a genuine dispute.
- 18.5. Either party may terminate this Contract at any time by giving no less than three months' notice to the other. In the event of termination the Buyer will only be liable to pay to the Supplier such sums as may be due for Services properly provided up to the date of termination.
- 18.6. The termination of the Contract, howsoever arising, shall be without prejudice to the rights and duties of the Parties accrued prior to termination.

## **19. Defaults**

- 19.1. If at any time after the Commencement Date:
  - 19.1.1. the Buyer (or its Authorised Officer) determines that the Services or any part of them have not been supplied in accordance with the Contract; or
  - 19.1.2. the Supplier has failed to comply with any requirement made by the Buyer (or its Authorised Officer) within the terms of the Contract; or
  - 19.1.3. the Buyer (or its Authorised Officer) deems that Supplier has adversely affected the image or reputation of the Buyer; or

19.1.4. the Supplier is in breach of any part of this Contract

then without prejudice to any other right or remedy available to the Buyer, the Buyer or its Authorised Officer may issue Default Notices and deduct sums of money in accordance with the procedures set out below.

19.2. Any or all of the following procedures may be used upon issue of notice in writing to the Supplier and the Authorised Officer shall have sole and entire discretion as to which is most appropriate:

19.2.1. the Buyer may make such deduction from the payment due to the Supplier as the Authorised Officer shall reasonably calculate as compensation to the Buyer in respect of the Supplier's failure;

19.2.2. without terminating the Contract, the Buyer may itself provide or procure the provision of any part of the supply of Services until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Supplier is able to perform the Contract to a standard acceptable to the Buyer;

19.2.3. without terminating the whole Contract, the Buyer may determine that part of the supply of Services shall no longer be provided by the Supplier and itself provide or procure a third party to provide that part of the service;

19.2.4. without terminating the Contract, the Buyer may require the Supplier to remedy the default within a specified timescale at the discretion of the Buyer; and

19.2.5. the Buyer may terminate the whole of the Contract, in accordance with Condition 18 (Termination).

Any expenses incurred which are in addition to the cost of the relevant part of the supply of Services arising as a consequence of suspension of delivery of Services or procuring a third party to do so shall be recovered from the Supplier in accordance with these Conditions.

## **20. Substitute Supplier**

20.1. The Buyer may engage a substitute supplier if:

20.1.1. the Supplier fails to deliver the Services within the timescales set out in the Order and the Tender Documents or;

20.1.2. the Services fail to meet the requirements set out in the Tender Documents and  
Order in particular or are not fit for purpose.

20.2. Where the Buyer engages a substitute supplier, the Buyer must notify the Supplier in respect of the Supplier's failure and place and order with a substitute supplier of the Buyer's choice to supply the Services.

20.3. Where the Buyer has notified the Supplier in accordance with this Condition 20, the Buyer may recover from the Supplier any costs, losses, damages and expenses incurred by the Buyer because of the failure of the Supplier together with any costs

and expenses incurred over and above the amount which the Buyer had originally agreed to pay to the Supplier for the supply of the Services.

## **21. Sustainable Procurement**

- 21.1. The Buyer is committed to purchasing sustainable products wherever possible. To support the Buyer in its delivery of Sustainable Procurement, the Supplier shall without prejudice:
  - 21.1.1. provide all such information regarding the environmental impact of any products supplied or used under this Contract as may reasonably be required by the Buyer to permit informed choices by consumers.

## **22. Performance of the Services and the Specification**

- 22.1. The Supplier shall at all times during the Contract Period supply the Services comprehensively with due skill, care and diligence strictly in accordance and in compliance with the Contract, including but not limited to:
  - 22.1.1. the Specification and implementation and maintenance of appropriate Quality and Environmental Management Systems;
  - 22.1.2. the Buyer's Guidelines in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Buyer and supplied to the Supplier;
  - 22.1.3. the instructions issued to the Supplier by any Authorised Officer under or in connection with the Contract;
  - 22.1.4. all relevant Legislation;
  - 22.1.5. in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the customers and other occupiers of the Establishments or Premises and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Buyer.

## **23. Key Performance Indicators**

- 23.1. Pursuant to the Specification, the Parties shall meet on the relevant review date(s) at premises to be agreed between them throughout the Contract Period in order to review performance and Key Performance Indicators, agree upon any issues which are outstanding and/or require review, and ensure compliance by the Supplier with any monitoring arrangements or monitoring exercise that may be reasonably instigated or required by the Buyer. In addition, the Parties shall attend contract management meetings at regular intervals (on dates to be agreed) in accordance with the requirements of the Specification.
- 23.2. In the event of sustained underperformance or failure on the part of the Supplier to achieve a Key Performance Indicator for the agreed period of consecutive months, then (without prejudice to other right or remedy available to the Buyer under this Contract), the Buyer will meet with the Supplier's Senior Management to review this. If the issue cannot be resolved between the Parties, the Buyer will be entitled to either find a substitute Supplier or terminate this Contract.

## **24. Freedom of Information**

- 24.1. The Supplier acknowledges that the Buyer is subject to the requirements of the Environmental Information Regulations 2004 and the 2000 Act and agrees to use all reasonable endeavours to assist the Buyer (at the Supplier's expense) to comply with its obligations imposed under those provisions.
- 24.2. The Supplier shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 24.3. Subject to Condition 24.6, the Supplier shall and shall procure that its sub-Suppliers shall:
  - 24.3.1. transfer any Request for Information received by the Supplier or its sub-Suppliers to the Buyer promptly and, in any event, within two (2) Working Days of its receipt;
  - 24.3.2. provide the Buyer with a copy of all Information in its possession or power in the form and within the time scale that the Buyer requires including such information as the Buyer may require in order to comply with the Buyer's Publication Scheme;
  - 24.3.3. provide all necessary assistance as reasonably requested by the Buyer to enable the Buyer to respond to a Request for Information within the time for compliance prescribed by section 10 of the 2000 Act;
  - 24.3.4. not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Buyer.
- 24.4. Subject to Condition 24.6, the Buyer shall be responsible for determining, in its absolute discretion, whether:
  - 24.4.1. Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
  - 24.4.2. any Information is to be disclosed in response to a Request for Information.
- 24.5. The Supplier acknowledges that the Buyer may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
  - 24.5.1. without consulting the Supplier; or
  - 24.5.2. following consultation with the Supplier and having taken its views into account.
- 24.6. Where the 2000 Act applies to the Supplier (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Supplier shall:
  - 26.6.1. comply with the 2000 Act and any associated legislation and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
  - 26.6.2. where the Supplier receives a Request for Information from a third party

under the 2000 Act which relates to the Buyer and / or this Contract:

- (a) inform the Buyer about the Request for Information and the nature of the Information being sought as soon as reasonably possible;
- (b) consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request for Information;
- (c) consult with the Buyer prior to the disclosure of any such Information; and
- (d) keep the Buyer informed about the Supplier's progress in dealing with any Request for Information and where requested by the Buyer , provide the Buyer with copies of any correspondence and documents relating to the Request for Information.

24.7. The Supplier shall indemnify the Buyer against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Buyer as a result of any breach of this Condition 24 by the Supplier, the Supplier's personnel, sub-Suppliers or agents.

24.8. The Supplier acknowledges that the definition of Confidential Information is indicative only and that the Buyer may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.

## **25. Data Protection**

25.1. The Supplier shall comply with its obligations, whether as data controller, data processor or otherwise under the Data Protection Act 1998 and shall promptly provide the Buyer with such information (including but not limited to a copy of the Supplier's registration under that Act) as the Buyer may reasonably require to satisfy itself of the Supplier's compliance.

25.2. The Supplier and any sub-Supplier shall only undertake processing of Personal Data (as defined) reasonably required in connection with the delivery of the Services.

25.3. The Supplier shall not disclose Personal Data to any third parties other than:

- 25.3.1 to its employees and authorised sub-Suppliers to whom such disclosure is reasonably necessary in order for the Supplier to supply the Services; and
- 25.3.2 to the extent required under a court order provided that disclosure under Condition 25.1 as above is made subject to written terms substantially the same as and no less stringent than the terms contained in this Condition 25 and that the Supplier shall promptly inform the Buyer in writing of any disclosure of Personal Data it or a sub-Supplier is required to make under Condition 25.3.

25.4. Without prejudice to the generality of Condition 25.1, where the Buyer is data controller for any Personal Data processed by the Supplier as part of supplying the Services, the Supplier (as data processor) shall:

- 25.4.1. act only on instructions from the Buyer, as data controller;
- 25.4.2. take appropriate technical and organisational measures against unauthorised

or unlawful processing of Personal Data and accidental loss or destruction of or damage to Personal Data and inform or on request supply written particulars of the measures taken to the Buyer.

- 25.5. The Supplier shall indemnify and keep indemnified the Buyer against all actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the Buyer in respect of any breach by the Supplier (and/or any act or omission of any sub-Supplier ) of its obligations under this Condition 25.
- 25.6. The Supplier shall, where necessary make such application for an amendment of its registration under the Data Protection Act 1998 and take such other steps as may be practicable to afford the Buyer access to Personal information and other information which is reasonably required by the Buyer for the purposes of its statutory duties or in connection with its rights and obligations under this Contract.
- 25.7. Each Party undertakes to the other Party that it will not knowingly place the other Party in breach of that other Party's obligations under the Data Protection Act 1998.
- 25.8. Each Party shall comply with its obligations under the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations thereunder.
- 25.9. Each Party shall also comply with the Freedom of Information Act 2000 insofar as it affects the provision of the Data Protection Act 1998.
- 25.10. The Supplier shall comply with the provisions of the Data Protection Act 1998 and will indemnify the Buyer against all action costs expenses claims proceedings and demands which may be made or brought against the Buyer for breach of statutory duty under the Acts which arises from the use of disclosure or transfer of personal data by the Supplier and its personnel.
- 25.11. The Supplier shall in relation to the Data it holds belonging to the Buyer ensure that it:
  - 25.11.1. encrypts any Buyer data on mobile devices (including not but not limited to laptops, blackberry, mobile phones, USB memory stick, personal digital assistance (PDA)) and adopt appropriate password controls;
  - 25.11.2. keeps all computers, laptops and other electronic devices, which hold information locked and secured and does not leave any Buyer Data in unattended vehicles;
  - 25.11.3. store all paper files in locked cabinets within a secure area;
  - 25.11.4. have in place a procedure to challenge any unauthorised or unknown individuals seen on the Supplier's premises;
  - 25.11.5. ensure that any Buyer Data is disposed of properly and securely;
  - 25.11.6. report the loss of any Buyer hard Data (including but not limited to schedules, behaviour logbook, and paperwork) immediately to the Buyer.
- 25.12. The Supplier shall not:

- 25.12.1. leave the Buyer Data in any unsecured area;
- 25.12.2. take the Buyer Data out of the Supplier's premises unless prior written consent has been obtained from the Buyer;
- 25.12.3. transmit, or exchange Data by any means, unless it has prior written consent of the Buyer ;
- 25.12.4. hold Buyer Data for longer than required by law.

25.13. The Supplier shall, where necessary make such application for an amendment of its registration under the Data Protection Act 1998 and take such other steps as may be practicable to afford the Buyer access to Personal Information and other information which is reasonably required by the Buyer for the purposes of its statutory duties or in connection with its rights and obligations under this Contract.

25.14. The Provider shall inform the Buyer promptly (and in any event within 24 hours) if any data or information related to the provision of this Contract is subject to unauthorised access, goes missing, is lost in error or is believed to have been lost or stolen, regardless of whether it was stored securely or otherwise.

25.15. The Provider shall co-operate with and fully and completely implement any changes to its data security processes required by the Buyer from time to time, whether as a result of there being a loss of data by the Provider or otherwise.

## **26. Management Information**

- 26.1. The Supplier shall provide the Management Information to the Buyer at intervals to be agreed between the parties.
- 26.2. The Supplier shall keep accurate records of all deliveries, comments and complaints. These reports should be submitted to the Buyer on a quarterly basis.
- 26.3. The Supplier shall allow persons nominated by the Buyer access to all management records and documents in the possession of the Supplier in connection with the performance of this Contract, including all accounting records and financial information in the possession, custody or control of the Supplier or the Suppliers' auditors.
- 26.4. The Supplier shall keep and maintain such necessary data and information and shall provide such assistance as the Buyer may reasonably require to enable the Buyer to complete all official returns, including (where applicable) but without limitation (provided the nature of such data and information and the format for the same has been agreed by the Parties at the last Relevant Review Date):
  - 26.4.1. returns to the Department of Health and the Department for Works and Pensions;
  - 26.4.2. returns to the Chartered Institute of Public Finance and Accountancy;
  - 26.4.3. information required by the National Audit Office ;

26.4.4. information required for the purposes of compliance with any External Audit, Best Value, or other inspection; and

26.4.5. information required in order to ensure compliance with the Equality Act 2010 other applicable legislation and generally to ensure conformity with obligations contained in Condition 34 (Unlawful Discrimination and Equal Opportunities).

## **27. Assignment and Sub-contracting**

- 27.1. The Supplier shall not assign any of its rights and/or obligations under this Contract or sub-contract the supply of the Services to any person without the previous written consent of the Buyer, which shall be at the absolute discretion of the Buyer.
- 27.2. Any proposed sub-Supplier must supply to the Buyer its current UKAS approved hygiene audit prior to commencing support and the sub-Supplier shall hold such certification throughout the Contract Period.
- 27.3. This condition 27 shall not relieve the Supplier from any liability or obligation under the Contract, and the Supplier shall be responsible for the acts, defaults or neglect of any sub-Suppliers, its employees and agents in all respects as if they were the acts, defaults or neglect of the Supplier itself.

## **28. Business Continuity Plan**

- 28.1. The Supplier will develop a Business Continuity Plan in conjunction with the Authorised Officer which should be reviewed and tested annually.
- 28.2. All the Supplier's Personnel need to have a sufficient understanding of the plan and to be able to implement it in the event of an emergency or as required.

## **29. The Supplier's Personnel**

- 29.1. The Supplier shall ensure that all of its personnel delivering and supplying the Services are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform. The Supplier shall endeavour to ensure that any person delivering the goods shall before commencement of duties be medically fit to carry out the duties for which that person has been so employed.
- 29.2. The Supplier shall employ sufficient suitably qualified personnel to ensure that the Services are provided in all respects in conformity with the Specification and Orders throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise.
- 29.3. Throughout the Contract Period the Supplier undertakes it will have in place its own safeguarding procedures acceptable to the Buyer which will be made available to the Buyer on demand; The Supplier shall ensure that there are robust procedures for responding to concerns and the Supplier shall also ensure that they follow the Buyer's Whistle Blowing Policy to protect staff who wish to raise such concerns.
- 29.4. The Supplier shall be responsible for ensuring that its personnel are safe and proper persons to deliver the Services in compliance with its own safeguarding policy, procedure and legal obligations and in accordance with this Condition 29.

29.5. The Buyer reserves the right to require the Supplier at no cost to the Buyer to remove from supplying the Services any Supplier personnel allocated to the performance of the Contract by the Supplier who in the reasonable opinion of the Buyer is detrimental to the provision of the Goods.

### **30. Right of Set off and Recovery of Sums Due**

30.1. Whenever under this Contract any sum of money shall be recoverable from or payable by the Supplier to the Buyer the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Contract or any other contract with the Buyer.

30.2. Where the Authorised Officer considers that an overpayment has been made to the Supplier or that any sum is due to the Buyer from the Supplier under the terms of this Contract due to;

30.2.1. an error in any account which has been subject to certification for payment;

30.2.2. an error in any invoice; or

30.2.3. arising from any other cause;

30.3. He or she shall serve a notice on the Supplier indicating the amount or amounts he or she considers to have been overpaid or to be due to the Buyer and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Supplier

30.4. If the Supplier is of the Opinion that the Buyer has either failed to make a payment due under this Contract or made a payment in error, then the Supplier shall, within not more than 28 days of such payment either being due or made in error, as the case may be, give to the Buyer written notice specifying the said error or failure made, the sum due to the Supplier (or the Buyer as the case may be) to correct such error or failure and information as to the unpaid delivery of the goods undertaken by the Supplier to which it is of the opinion that such non-payment or incorrect payment has been made. In the event such sum is properly due to the Supplier, the Buyer shall pay to the Supplier such sum in accordance with this Contract within 30 days of receipt of such written notice.

### **31. Value Added Tax**

31.1. All payments made by any Party to the other Party under the terms of this Contract shall be exclusive of any Value Added Tax chargeable in respect of the supply of Services or Goods for which payment is consideration and in so far as such payments are to be made under this Contract such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

### **32. Issue and Dispute Resolution**

32.1. In the event any dispute or difference between the Parties relating to this Contract

(“Dispute”), in the first instance each Party shall nominate a representative to meet, discuss and attempt to resolve in good faith the dispute or difference in accordance with the agreed escalation procedure.

- 32.2. If any Dispute is incapable of resolution between the Parties, the Parties shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and all parties shall use all reasonable endeavours to procure the prompt determination of the reference.
- 32.3. The Expert shall be deemed to act as an expert and not as an arbitrator.
- 32.4. The costs of the Expert appointed under this Condition 32 shall be equally apportioned between the Parties or as may otherwise be directed by the Expert.
- 32.5. If the Parties are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Parties with the intent that by agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven (7) days.
- 32.6. Nothing in this Contract shall prevent any of the Parties at any time from seeking any interim or interlocutory relief from the Court.
- 32.7. Either Party may, within ninety (90) days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.
- 32.8. Until the time that a dispute between the Supplier and the Buyer is resolved the Supplier shall continue to perform the delivery the Services and be paid by the Buyer in accordance with this Contract.

### **33. Health and Safety**

- 33.1. The Supplier shall in supplying the Services ensure that its personnel and any sub-Supplier’s personnel or any other person acting on behalf of the Supplier comply with all statutory and other legal requirements in relation to the safety and health of its employees, of sub-Suppliers, of any other persons and of the members of the public. The Supplier shall in particular comply with all legislation in the field of health and safety at work applying to the delivery and supply of the Services.
- 33.2. For the guidance of the Supplier the regulatory framework requiring compliance by the Supplier includes but is not limited to:
  - The Health and Safety at Work etc. Act 1974;
  - Food Safety Act 1990;
  - The Control of Substances Hazardous to Health Regulations 2002;
  - The Occupiers’ Liability Acts 1957 and 1984;
  - The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
  - The Health and Safety (First Aid) Regulations 1981;
  - The Workplace (Health, Safety and Welfare) Regulations 1992;
  - The Management of Health and Safety at Work Regulations 1999;

- The Personal Protective Equipment at Work Regulations 1992;
- The Provision and Use of Work Equipment Regulations 1998;
- The Health and Safety (Display Screen Equipment) Regulations 1992;
- The Health and Safety Information for Employees Regulations 1989;
- Manual Handling Operations Regulations 1992;
- The Electricity at Work Regulations 1989;
- The Control of Noise at Work Regulations 2005; and
- Health and Safety (Safety, Signs and Signals) Regulations 1996.

33.3. The Buyer shall be empowered to suspend the delivery of the Services in the event of non-compliance by the Supplier with the health and safety requirements of the Contract. The Supplier shall not resume the delivery of the Services until the Buyer's officers are satisfied that the non-compliance has been rectified.

33.4. No payment will be made for any Services omitted as result of a non-delivery of the Services required by the Buyer due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Buyer's officers require the Supplier to take to remedy the breach of the health and safety requirement.

33.5. The Supplier shall keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Buyer in writing of any changes made; and comply with any changes, amendments or further instructions reasonably requested or issued by the Buyer in connection with the Supplier's health and safety procedures.

#### **34. Unlawful Discrimination and Equal Opportunities**

34.1. In supplying the Services the Supplier shall comply and shall ensure that its employees, agents and sub-Suppliers comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Legislation including the Equality Act 2010, as well as statutory and other official guidance and codes of practice.

34.2. The Supplier acknowledges that the Buyer has a general duty under the Equality Act 2010 ("the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity when carrying out its functions.

34.3. The Supplier shall be considered to have the same obligations as the Buyer under the Act when supplying the Services under this Contract. The Supplier shall comply with the general duty under the Act as set out in Condition 34.2 above and any Codes of Practice issued by the Equality and Human Rights Commission. The Supplier shall be considered to be in breach of this Condition in the event of any non-compliance with the Act and any Codes of Practice.

34.4. The Supplier shall adopt the Buyer's own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Supplier) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of delivering the Services, discriminate on the grounds of race directly, indirectly or by victimisation.

34.5. The Supplier shall indemnify the Buyer in respect of any costs and legal expenses

incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Buyer for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Condition by the Supplier.

34.6. The Supplier shall inform the Buyer as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Supplier under the Equality legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising there from, and shall provide the Buyer with such further information and documentation as may be required in relation thereto.

### **35. Supplier's Warranties and Liabilities**

35.1. The Supplier from the Commencement Date and throughout the Contract Period warrants, represents and undertakes to the Buyer as follows:

- 35.1.1 it has in all respects complied with every requirement in the Tender Documents (where applicable);
- 35.1.2 it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract and it is not contracting with the Buyer in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Buyer except those contained in this Contract;
- 35.1.3 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Buyer by the Supplier in connection with or arising out of this Contract and the Tender Documents are true, complete and accurate in all respects;
- 35.1.4 it has full power and authority to enter into the Contract and thereafter supply the Services;
- 35.1.5 it is of sound financial standing and the Supplier is not aware of any circumstances (other than such circumstances as expressly disclosed in writing by the Supplier to the Buyer) which may adversely affect any financial standing in the future;
- 35.1.6 it has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and other resources available to it in order to deliver the Services in accordance with this Contract;
- 35.1.7 it has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to supply the Goods and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to supply the Services; and
- 35.1.8 it will supply the Services in accordance with this Contract with due skill, care and diligence and within the times stated in the Tender Documents and the Specification in particular, which times shall be of the essence.

35.2. The Supplier shall be liable for and shall fully and promptly indemnify and hold harmless the Buyer, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with the Supplier's obligations under this Contract in respect of:

- 35.2.1 any claims, demands or proceedings brought against the Buyer or by any third party by reason either directly or indirectly of any default or breach by the Supplier of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;
- 35.2.2 any fraudulent or negligent act or omission by the Supplier (including, without limitation, any misappropriation of monies properly due to the Buyer );
- 35.2.3 any liability of the Buyer to pay compensation to a third party arising out of the Supplier's default in respect of failure to supply the Services in accordance with the Contract; and
- 35.2.4 any failure by the Supplier to deliver the Services in accordance with all and any terms of this Contract and the Tender Documents (including but not limited to the Specification).

35.3. Except as provided by this Contract, the Buyer shall not under any circumstances be liable to the Supplier whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, in the course of or in connection with the supply of the Services or the access to or use of any Premises, or access or use of the Buyer's premises or facilities by the Supplier or the Supplier's personnel.

35.4. Condition 35.3 above shall not apply in relation to:

- 35.4.1 any failure by the Buyer to make proper payment to the Supplier in accordance with the terms of the Contract; and

- 35.4.2 any deliberate or negligent act or omission of the Buyer or any of its employees giving rise to death or personal injury.

## **36. Copyright and Intellectual Property**

36.1. Subject to Condition 36.2 the intellectual property rights in this Contract and all documents, records, data, or other information produced by the Supplier pursuant to this Contract shall belong exclusively to the Buyer and the Supplier shall not make or distribute to a third party any copies of this Contract or the documents, records, data or other information produced by it without the written consent of the Buyer, which consent the Buyer shall be absolutely entitled to withhold.

36.2. The Supplier shall be entitled to make copies of the Contract where such copies are required to enable it to supply the Services.

36.3. Any and all intellectual property rights developed under this Contract or arising from the supply of the Services by the Supplier shall belong to the Buyer and the Supplier agrees that it shall execute or cause to be executed (by personnel if necessary) all deeds, documents and acts required to vest such intellectual property rights in the Buyer .

- 36.4. The Supplier shall indemnify the Buyer against any claims, liabilities, costs, losses, expenses, proceedings and damages arising out of any infringement or alleged infringement of any third party intellectual property rights in connection with the supply of the Services.
- 36.5. Subject to Condition 36.6, the Supplier shall notify the Buyer of and conduct any litigation arising from (including all negotiations in connection with) any claims, demands and actions in respect of any infringement or alleged infringement of any intellectual property rights. The Buyer shall at the request of the Supplier, afford the Supplier all reasonable assistance for the purpose of contesting any such claims, demands and actions. The Supplier shall reimburse the Buyer for all costs and expenses (including, but not limited to legal costs and disbursements on a full indemnity basis) incurred in so doing.
- 36.6. If so requested by the Buyer, the Supplier shall either:
  - 36.6.1 take all such steps as may be necessary to avoid the infringement or the alleged infringement of any intellectual property rights; or
  - 36.6.2 procure such licence as may be necessary to continue the supply of the Services without infringement, on terms which are reasonably acceptable to the Buyer .
- 36.7. The Supplier shall act as the bailee of any Data which may at any time be in the Supplier's possession or under its control and shall store such Data safely and separately from any data not relating to the supply of the Services and in a manner which makes it readily identifiable as Data relating to this Contract and the Supplier shall at all times comply with the Data Protection Act 1998 and the Computer Misuse Act 1990 and shall give the Buyer (and/or persons nominated by the Buyer ) right of access to any premises used by the Supplier to monitor the supply of the Services and compliance with the Legislation.

## **37. Notices**

- 37.1. Notices under this Contract shall be given by sending them by electronic mail, pre-paid registered post, fax (with a confirmatory copy by post), or personal delivery to the other Party at its address set out in the description of the Parties or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received forty-eight (48) hours after sending (as evidenced by the sender's receipt), notices sent by fax and electronic mail shall be deemed to have been received on the first working day after sending (in the case of notices by fax as shown by the timed print out on or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

## **38. Gratuities, Tips and Charges**

- 38.1. The Supplier shall not whether itself or by any of the Supplier's personnel engaged in the delivery of the Services accept any gratuity, tip or any form of money taking or reward, collection or charge for any part of the Services other than bona fide charges approved by the Buyer.

## **39. Entire Agreement and Survival of Provisions**

- 39.1. This Contract supersedes all prior agreements and arrangements of whatever nature

and sets out the entire agreement and understanding between the Parties relating to the Services. Unless otherwise stated herein, this Contract applies in place of and prevails over any other terms, conditions and prior representations, whether contained in correspondence or implied by custom or law. Nothing in this Contract shall limit or otherwise exclude liability for fraudulent statements or misrepresentations made by any Party.

- 39.2. The rights and obligations which expressly or by their nature are intended to survive the expiry or termination of this Contract shall so survive and bind the Parties their successors and assigns.

## **40. Force Majeure**

- 40.1. If a Force Majeure event arises on or following the date of this Contract (irrespective of the fact that this Contract may then be conditional) which directly causes the Supplier to be materially unable to comply with any of its obligations hereunder, the Supplier and the Buyer may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one (1) month of the commencement of the said event, and such event is continuing or its consequence remains such that the Supplier is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of Condition 18 (Termination). Failure by the Supplier to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.
- 40.2. For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, failure to meet any foreseen regulatory changes and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters, which a prudent and diligent Supplier could have avoided with the application of foresight, are not to be considered as events of Force Majeure or Acts of God.

## **41. Costs**

- 41.1. Each party shall bear their own costs of and incidental to the preparation of this Contract.

## **42. Variations**

- 42.1. No Variation to the terms of this Contract shall be effective or binding unless agreed with the Buyer and recorded in writing. Such amendments will form an addendum to this Contract.

## **43. Contracts (Rights of Third Parties) Act 1999**

- 43.1. Unless expressly stated nothing in this Contract or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Contract.

## **44. Waiver**

- 44.1. Failure by any Party at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the other Party of any of the provisions of the Contract shall not:

44.1.1. constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of the Contract; nor

44.1.2. affect the validity of the Contract or any part thereof or the right of the Buyer to enforce any provision in accordance with its terms.

#### **45. Good Faith**

45.1. Both parties agree that they will work together in good faith in an open, proactive and co-operative manner throughout the Term.

#### **46. Law and Jurisdiction**

46.1. The Contract shall be governed by and construed in accordance with the Laws of England and the Parties submit to the exclusive jurisdiction of the English courts.