

**NORTH TYNESIDE COUNCIL
GENERAL CONDITIONS OF CONTRACT
FOR THE SUPPLY OF GOODS**

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GENERAL CONDITIONS

1 DEFINITIONS AND INTERPRETATIONS

The terms and expressions used in this Contract shall have the meanings set out below:

- 1.1 "Authorised Officer" means the representative of the Authority referred to in Condition 3 (including any representative appointed under that Condition).
- 1.2 "Authority" means the Authority of the Borough of North Tyneside.
- 1.3 "Commencement Date" means the date stated in the Specific Conditions.
- 1.4 "Conditions" means all the terms and conditions of the Contract.
- 1.5 "Confidential Information" means information of a confidential nature, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information (and in the case of the Authority, this shall include the Tender and the Contract Documentation), information which relates to the finances, business, affairs, properties, assets, trading practices, goods/services, developments, trade secrets, Intellectual Property Rights, employees and other workers, customers and suppliers of either party, or to any other third party with whom of either party has dealt, or which is Personal Data (as defined in the Data Protection Act 1998).
- 1.6 "Contract" means the agreement between the Authority and the Contractor comprising the Contract Documents to provide the Service in accordance with the terms of the Conditions and where applicable, pursuant to either one Order or a series of Orders.
- 1.7 "Contract Documents" means all of the following: -
- the Tender;
 - the Articles of Agreement;
 - these General Conditions of Contract;
 - the Specific Conditions;
 - the Specification;
 - the Schedule of Prices;

- the method statement of the Contractor forming part of the Tender (“Method Statement”);
- all the schedules to the Conditions;
- where applicable, any Order placed and any attachments or amendments that form part of the Contract as agreed by the parties hereto.

- 1.8 “Contract Period” means the period from and including the Commencement Date until this Contract terminates on the date as specified in the Specific Conditions (and where the context so admits including any agreed extension).
- 1.9 “Contract Standard” means such standard in compliance with each and every respect of all relevant provisions of the Contract. Where no criteria are stated in the Contract, the standard is to be the entire satisfaction of the Authority and in accordance with Good Industry Practice.
- 1.10 “Contractor” means the party with whom this Contract is placed to Supply the Goods to the Authority as appearing in the Articles of Agreement, or an Order placed by the Authority pursuant to the Contract, and where the context so admits shall include the Contractor's employees, agents sub-contractors, permitted assigns and their employees and agents.
- 1.11 “Data Protection Impact Assessment” means an assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
- 1.12 “Data Protection Legislation” means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
- 1.13 “Data Sharing Agreement” means, where applicable, the data sharing agreement signed by the parties to the Contract.
- 1.14 “Data Subject Access Request” means any request from a data subject under Chapter 111 Section 2 (Information and Access to Data) thereof.

- 1.15 "Goods" means the articles, materials or any other things as described in the Tender Documents supplied or to be supplied by the Contractor in accordance with the Contract and subject to either one Order or a series of Order placed.
- 1.16 "Good Industry Practice" means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged in the provision of services similar to the Goods under the same or similar circumstances as those applicable to the Contract and which are in accordance with all codes of practice published by relevant professional bodies prevailing from time to time.
- 1.17 "EIRs" means the Environmental Information Regulations 2004 together with any code of practice made pursuant to those Regulations and any related guidance issued by the Department for Environment, Food and Rural Affairs, the Information Commissioner or the Secretary of State for the Department of Constitutional Affairs.
- 1.18 "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in the Interpretation Act 1978) but excluding the EIRs, as amended, modified or re-enacted from time to time, together with all codes of practice made pursuant to that Act or pursuant to that subordinate legislation from time to time, together with any related guidance issued by the Information Commissioner or the Secretary of State for the Department of Constitutional Affairs.
- 1.19 "Force Majeure" means
- (a) explosion;
 - (b) war;
 - (c) strikes, riots and civil commotion;
 - (d) actual or threatened terrorist attack;
 - (e) acts of local or central government or other competent authorities (other than the Authority acting as a contracting authority, licensee, trustee or otherwise pursuant to this Contract);
 - (f) radioactive contamination;
 - (g) floods constituting a major environmental disaster
- and any cause materially affecting the performance by a party of its obligations under this Contract beyond its reasonable control affecting either party.

- 1.20 "Intellectual Property Rights" means any patents, trade marks, service marks, trade names, design rights, copyright, domain name, data-base rights, know-how and other intellectual property rights of whatever nature and wheresoever arising and in each case whether registered or unregistered and including any applications for the grant of any such rights.
- 1.21 "Law" means all relevant rules of law, Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, or directives or requirements of any regulatory body with which the Contractor is bound to comply and any applicable EU Community legislation, which may be in force during the period of the Contract, as enacted, amended or interpreted from time to time and "Laws" shall have a corresponding meaning.
- 1.22
- 1.23 "Location" means the location where the Goods, or any part thereof, is to be provided by the Contractor as specified or agreed by the Authority for the due performance of the Contract from time to time..
- 1.24 "Order" means any order placed by the Authority with the Contractor for the supply of Goods pursuant and subject to the Contract.
- 1.25 "Personal Data" shall have the meaning ascribed to such term in the UK GDPR
- 1.26 "Personal Data Breach" means anything which constitutes a "personal data breach" within the meaning of the UK GDPR Article 4
- 1.27 "Price" means the rates or prices as specified in the Contract.
- 1.28 "Processing" shall have the meaning given to such term in the DPA 2018
- 1.29 "Prohibited Act" means
- (i) directly or indirectly offering, giving or agreeing to give to any employee of the Authority any gift or consideration of any kind as an inducement or reward:

(a) for doing or not doing any act in relation to the obtaining or performance of this Contract or any other contract with the Authority, or

(b) for showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority; and/or committing any offence:-

(ii) an offence under the Bribery Act 2010, Competition Act 1998 or the Enterprise Act 2002;

(iii) an offence under legislation creating offences in respect of fraudulent acts;

1.20.1 (iv) an offence or any activity at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority, or

1.20.2 (v) defrauding or attempting to defraud or conspiring to defraud the Authority.

1.30 "Schedule of Prices" means the itemised schedule of prices of the Contractor accompanying its Tender in respect of the Goods to be provided.

1.31 "Specific Conditions" means the additional terms and conditions identified as the conditions specific to the Contract.

1.32 "Specification" means the description of Goods forming part of the Tender Documents detailing the Authority's requirements regarding the supply of Goods in accordance with the Contract (including any modification or variation thereof as agreed by the Authority in writing).

1.33 "Tender" means the tender submission by way of the completed Form of Tender submitted by the Contractor in response to the Tender Documents.

1.34 "Tender Documents" means all of the following:-

- the Instructions For Tendering;
- Standard Selection Questionnaire;
- the Form of Tender;
- the Articles of Agreement;
- the Non-Collusive Tendering Certificate;
- these General Conditions of Contract;
- the Specific Conditions;
- the Specification;
- all the schedules to the Conditions;
- the Schedule of Prices;
- all appendices;

- the form of Deed of Guarantee (if any);
- the form of Bond (if any).

1.35 “VAT” means value added tax as described in Condition 18.

1.36 “UK Data Protection Legislation”

means

(a) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time;

(b) The DPA 2018 to the extent it relates to processing of personal data and privacy;

(c) all applicable Law about processing of data and privacy;

(d) any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body, all of which are current at the time of any Processing of Personal Data

1.37 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to that statute, order, regulation or instrument as from time to time amended, modified or re-enacted by any subsequent statute, order, regulation or instrument after the date of the Contract and include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder.

1.38 Any reference to time shall be construed, during the period of summer time, to be British Summer Time and otherwise to be Greenwich Mean Time. References to month shall mean a calendar month.

1.39 Any ambiguity, discrepancy, error, omission or mis-statement shall not vitiate the Contract nor shall it release the Contractor from the completion of any part of the Contract.

1.40 Any reference to ‘person’ shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint common interest, or any other legal or commercial entity or undertakings.

1.41 Words importing the singular number shall include the plural and vice versa and words importing the masculine include the feminine and neuter and vice versa.

1.42 The headings to the clauses, annexes and paragraphs of the Contract will not affect the interpretation.

1.43 Any obligation on the Contractor not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.

- 1.44 The General Conditions and the Specific Conditions shall apply on an equal basis, except where there is an inconsistency between the General Conditions and the Specific Conditions, the relevant Specific Condition shall prevail.
- 1.45 Where there is any conflict or inconsistency between the Specification and the Conditions, the Conditions shall prevail.
- 1.46 Where a term of the Conditions provides for a list of items following the word “including” or “includes” then such a list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item, which might have been included in such a list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.47 Any reference to the Contractor “procuring” another person to act or omit to act in a certain manner shall mean that the Contractor shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 1.48 All references to the Contract shall include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.

2 CONTRACT EXTENSION

- 2.1 If the Contract Period includes an option to extend and if the Authority intends to take up the option, the Contractor shall be notified in writing in accordance with the Specific Conditions prior to the commencement of the extension. If no such communication is received before the expiry of the Contract Period, the Contract shall terminate on the expiry of the initial Contract Period.
- 2.2 For the avoidance of doubt, the Conditions shall continue and apply throughout any extension period.

3 AUTHORISED OFFICER

- 3.1 The Authorised Officer shall be the person named (or in default of appointment such representative appointed by the Authority from time to time) to act in the name of the Authority for the purposes of the Contract.
- 3.2 The Authority shall give notice in writing to the Contractor of the replacement of the Authorised Officer or if any person ceases to be the Authorised Officer.
- 3.3 The Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. If any such appointment is made, the Authorised Officer shall give written notice to that effect to the Contractor.

4 ORDERS AND CONTRACTS OF SALE

- 4.1 Orders for Goods shall be made in writing on the Authority's official purchase order. No Goods shall be delivered unless the Contractor shall have first received an Order. The reference number of the relevant Order must be stated on the invoices submitted by the Contractor and no payments will be made for any Goods not covered by an Order.
- 4.2 The Contractor shall accept Orders from the Authority for the supply of Goods during the Contract Period. Acceptance by the Contractor of any Order shall result in a contract for the sale of the Goods, which are subject of such an Order and subject to the Conditions.
- 4.3 Notwithstanding any information in regard to estimated value and/or volume of Goods set out in the Specification or otherwise the Authority gives no representation or guarantee whatsoever as to whether any Order will be placed during the Contract Period or under the Contract.
- 4.4 The Authority does not accept liability whatsoever as to the actual value or number of Orders, which may be placed with the Contractor, save and except any liability arising from any fraudulent act of any employees of the Authority.
- 4.5 The Orders shall state the Goods required including the Authority's requirements with regard to timescale for delivery of the Goods and the fee basis applicable in respect of the relevant Order and the project to which it relates.
- 4.6 All Orders shall be signed by the Authorised Officer and where applicable the relevant contract manager of the Authority in respect of the relevant Order. Any Order with aggregate value of (£100,000 (one hundred thousand) or over is to be executed as a deed in accordance with the Authority's constitution.
- 4.7 Should the Contractor be of the reasonable opinion that any specified timescale for delivery of the Goods under an Order as being unreasonable it shall have a right of reasonable objection provided that this is exercised within 48 hours of its receipt of the Order. The decision of the Authority's Authorised Officer in relation to the reasonableness of any such objection shall be final and binding.

5 CONTRACT MANAGER

- 5.1 The Contractor shall employ a competent and authorised contract manager empowered to act on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the contract manager shall be deemed to have been given or made to the Contractor.
- 5.2 The Contractor shall forthwith give notice in writing to the Authority of the identity, address and telephone numbers of the person appointed as contract manager and of any subsequent appointment. The contractor shall give maximum possible notice to the Authority before changing its contract manager for the Contract.

6 MEETINGS AND PROGRESS REPORTS AND CHANGES TO METHOD STATEMENT

- 6.1 A competent representative of the Contractor shall attend any meetings, including site meetings, as may reasonably be requested by the Authority. The Contractor

shall make all arrangements for sub-contractors and suppliers to be present as required by the Authority.

- 6.2 The Contractor shall submit written reports to the Authority in connection with any material changes to the Specification submitted by the Contractor.

7 DAMAGE TO AUTHORITY PROPERTY

Should the Contractor cause any damage to Authority property in connection with the supply of the Goods or performance of the Contract, the Contractor shall rectify such damage at its sole expense within fourteen days of the Authority notifying the Contractor of the damage.

8 USE OF AUTHORITY'S LAND, PREMISES AND FACILITIES

- 8.1 The Contractor shall ensure that neither the Contractor nor its employees, agents nor sub-contractors shall do any act or thing at any Location owned or occupied by the Authority other than acts or things necessary for the proper supply of the Goods.

- 8.2 The Contractor shall provide to the Authorised Officer prior to the Commencement Date a schedule of all premises, depots and equipment to be used by the Contractor in the supply of the Goods. Any changes to the schedule during the Contract Period shall be notified in writing to the Authorised Officer at least 21 days prior to the change taking place. The Contractor shall allow the Authorised Officer the use of such premises, depots and equipment as may reasonably be required to ensure the proper performance of the Contract.

- 8.3 The Contractor shall at all times during the Contract Period permit the Authorised Officer access to all premises occupied by the Contractor for the purpose of the Contract and shall allow the Authorised Officer access to such materials and equipment as is reasonably necessary to allow the Authorised Officer to inspect the Goods.

9 SPECIFICATION

- 9.1 The quantity, quality and description of the Goods shall be as specified in the Contract by the Authority in the Specification and/or in the Contract. The Contractor shall ensure that all Goods supplied are of satisfactory quality, fit for purpose and fit for the purposes for which the Authority intends to use such Goods.

- 9.2 The Goods and their supply and delivery shall be so designed, manufactured, constructed, finished, stored, tested and packaged as to be safe and without risks to health and in accordance with all applicable Laws, regulations, legal requirements and British Standards implementing international or European Standards (or the European equivalent) appropriate to them. Where appropriate, the Goods shall be supplied with full instructions for their use, maintenance and repair and with any necessary warning notices clearly displayed.

10 DELIVERY

- 10.1 The Contractor shall deliver and arrange at its own expense transportation of the Goods on the date agreed and to the Location or other such location agreed between the parties.
- 10.2 Time shall be of the essence for the delivery of the Goods in accordance with the date and time as specified in an Order.
- 10.3 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered.
- 10.4 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery or supply stated in an Order or the Contract.
- 10.5 Unless expressly agreed in writing by the Authority to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to any delivery by instalments, delivery of any one instalment later than the date specified or agreed shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the relevant Order or the Contract (as the case may be at the discretion of the Authority) without further liability to the Contractor.
- 10.6 Commercial vehicles shall not enter or leave school premises of the Authority during morning, midday and afternoon breaks.
- 10.7 Commercial vehicles visiting the Authority's premises shall be fitted with audible reversing alarms. Drivers of all vehicles whilst on the Authority's premises shall have regard for the safety of all persons.
- 10.8 Where the Goods are delivered by the Contractor (or nominated courier), the point of delivery shall be when they are removed from the transporting vehicle and placed in an orderly fashion within the premises at the Location. Where the Authority collects the Goods from the Contractor, the point of delivery shall be when they are properly loaded onto the Authority's vehicle in the manner as specified by the Authority.
- 10.9 Where Goods are delivered to the Authority by the Contractor (or nominated courier) which cannot be checked at the time of delivery for any reason whatsoever, then any signature shall mean "signed for unseen". The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods or any acceptance of the Goods by the Authority.
- 10.10 The Contractor shall be solely responsible for arranging the unloading of any Goods supplied under the Contract from any vehicle and this must be carried out without assistance from pupils, school staff, or other Authority employees, staff or agents.
- 10.11 All Goods must be properly packaged and secured for delivery to the Authority to survive transit and to resist any pilferage, distortion, corrosion, contamination, loss or damage in transit whatsoever. All Goods shall be clearly, legibly and properly labelled and addressed.
- 10.12 The Authority shall not be liable to pay for any pallets, packages or containers in which Goods are supplied.

- 10.13 If the Authority or the Location where delivery is required is affected by circumstance of Force Majeure, the Authority shall be entitled to totally or partially suspend the date or dates for delivery of the Goods until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim whatsoever by the Contractor against the Authority, nor entitle the Contractor to terminate the Contract.
- 10.14 In the event of industrial action by the Contractor's employees, it remains the Contractor's responsibility to meet the requirements of this Contract. The Contractor shall inform the Authority immediately of any impending or actual disputes that may affect the Contractor's ability to supply the Goods or comply with an Order or the Contract.

11 DEFAULT

Should the Contractor not provide any Goods in accordance with the Contract Standard or supply Goods in accordance with the Contract, the Authority shall be entitled to withhold payment of the Price until the Contractor has provided the Goods in accordance with the Contract.

12 TERMINATION

- 12.1 The Authority may terminate any Order or part of an Order at any time by giving reasonable advance written notice to the Contractor. On receipt of such a notice from the Authority, the Contractor shall cease all preparations or work in respect of the Order or part of the Order. In full settlement but strictly subject to Conditions 13 and 17 the Authority shall pay the Contractor a reasonable charge for Goods (if any) provided up to the date of termination of that Order. The termination of an Order or part of an Order will not operate to terminate any other Order or this Contract but consequential amendments to any remaining Order may be necessary and will be agreed between the parties. Termination of an Order or part of an Order shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuation in force of any provision of this Contract which expressly or by implication is intended to come into force or continue in force on or after such termination (howsoever occasioned) of an Order or the Contract.
- 12.2 Without prejudice to other provisions of this Contract, this Contract is terminable by the Authority at its option at any time by giving not less than fourteen days notice to that effect to the Contractor and this Contract shall terminate immediately upon the expiry of such notice. The grounds for termination of the contract shall include:
- 12.2.1 where the contract is subject to substantial modification requiring a further procurement process;
- 12.2.2 where the Contractor should have been excluded from the procurement process for any reason;
- 12.2.3 where the contract should not have been awarded to the Contractor as a result of serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union.

12.3 The Authority shall be entitled to terminate this Contract with immediate effect:

12.3.1 If the Contractor commits a series of persistent breaches of the Contract, which remain unresolved for a period as deemed reasonable by the Authority after the Contractor, has received notice thereof from the Authority;

12.3.2 If the Contractor commits a material breach of its obligations under the Contract; and if such a breach is capable of remedy but not remedied within 14 days of the Authority's written notice requesting remedial action;

12.3.3 If the Contractor ceases or threatens to cease to carry on its business;

12.3.4 If any distress or execution sequestration or other such process is levied upon or enforced on or sued against the Contractor or if the Contractor offers to make any arrangement with its creditors;

12.3.5 If a trustee in bankruptcy, receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the Contractor; or

12.3.6 If the Contractor suspends or threatens to suspend payments of its debts or is unable to pay its debts as they fall due or goes into bankruptcy, receivership, liquidation or similar process save for the purpose of a genuine amalgamation or reconstruction in that insolvency.

12.3.7 If there is a change of control of the Contractor within the meaning of Section 840 of the Income and Corporation Taxes Act 1988; or

12.3.8 If any Force Majeure event prevents either party from performing its obligations under this Contract for any continuous period of three months.

13 CONSEQUENCES OF TERMINATION OF CONTRACT

13.1 If this Contract is terminated pursuant to the terms hereof or otherwise the Authority shall:

13.1.1 cease to be under obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Order of this Contract shall have been calculated and provided that such calculation shows a sum or sums due to the Contractor. For the avoidance of doubt and without prejudice to any other provisions of the Contract, the Authority shall be liable to pay to the Contractor only payment that has properly accrued in accordance with the Contract up to the time of the termination;

13.1.2 be entitled to engage and pay another contractor to provide and complete the supply of the Goods or any part thereof. Should the Authority instruct another contractor to perform the Contract and in doing so incur any additional expenditure in securing the performance of the requirements of the Contract in total, this shall be recoverable from the Contractor as a debt;

- 13.1.3 be entitled to deduct from any sum or sums which would have been due from the Authority to the Contractor under this Contract or any other contract or otherwise and to recover the same from the Contractor as a debt in respect of any loss or damage to the Authority resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Goods or any parts thereof as a result of termination under Condition 12.3. All such sums shall be ascertained and certified by the Authority's Head of Strategic Finance whose decision shall be final in the absence of manifest error;
- 13.1.4 in the event that any sum of money owed by the Contractor to the Authority (the Contractor's debt) exceeds any sum of money owed by the Authority to the Contractor (the Authority's debt) under this Contract then the Authority shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Authority's debt or to recover the Contractor's debt as a civil debt.
- 13.2 For the avoidance of doubt and without prejudice to any rights or remedies that Authority has under this Contract or otherwise
- 13.2.1 the expiration or any termination of this Contract (howsoever occasioned) will not affect any rights of the parties accrued to them under this Contract up to the date of expiry or of termination;
- 13.2.2 the expiration or any termination of this Contract (howsoever occasioned) shall not affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into force or continue in force on or after the expiration or such termination.

14 ACCEPTANCE AND REJECTION

- 14.1 The Authority shall be entitled to reject any Goods delivered which are not in accordance with the Contract or under general Law. The Authority shall not be deemed to have accepted any Goods until the Authority has had reasonable opportunity to actually inspect them following delivery to ascertain that they are in accordance with the Contract. The Authority is entitled to reject any Goods which are not in accordance with the Contract Standard until a reasonable time after such inspection.
- 14.2 Without prejudice to any other provisions of the Contract or the rights or remedies that the Authority has, if any of the Goods are not supplied in accordance with the Contract, the Authority shall be entitled:
- 14.2.1 to require the Contractor to make good the delivery or to supply replacement Goods in accordance with the Contract as soon as possible and in any event within five working days of the date as specified by the Authority. The Contractor shall make good any delivery or replace, free of charge any Goods damaged or lost in transit. Due delivery shall not be deemed to have taken place until such making good or replacement has occurred to the Authority's satisfaction;

14.2.2 at the Authority's sole option, and whether or not the Authority has previously required the Contractor to repair or replace the Goods, to treat the Contract as discharged by the Contractor's breach and require the repayment of any part of the Price for the relevant Order that has been paid together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other Goods in replacement; or

14.2.3 at its sole option to return the Goods at the Contractor's risk and expense, or request the Contractor to attend the Authority's premises or at the place of installation of the Goods for the purpose of removing, repairing and/or replacing and refitting the defective Goods without any costs or expenses to the Authority.

14.3 The Authority reserves the right to hold such defective delivery or defective Goods at the Contractor's risk or to return them at the risk and expense of the Contractor.

15 PASSING OF PROPERTY

15.1 Without prejudice to any rights of rejection which may accrue to the Authority under the Contract or otherwise, ownership and title in the Goods shall pass to the Authority upon delivery. Risk in the Goods remains with the Contractor until the Goods are delivered and accepted by the Authority in accordance with this Contract.

15.2 The Contractor acknowledges that Authority funds are held for public purposes and for the benefit of Authority taxpayers and the Authority is in the position of a charity trustee. In the event that the Contractor receives payment or part payment from the Authority for Goods which have not been delivered in accordance with the Contract, the Contractor shall hold such payment on trust for the Authority and deposit all such payments in a separate interest bearing account earning interest for the benefit of the Authority until the Goods have been unconditionally appropriated to the Authority and that the property in the Goods has passed to the Authority in accordance with the Contract.

16 PRICE

16.1 The Price to be paid for the Goods ordered under this Contract shall be the price prevailing at the date of the placing of the Order and not the price prevailing at the date of the receipt of the Goods.

16.2 The Contractor shall not be entitled to retain or set off any amount due to it from the Authority. The Authority may set off any amount due to it from the Contractor (including any applicable VAT payable) against any amount due to the Contractor under this Contract. The Authority shall notify the Contractor as soon as reasonably practicable of any such retention or set off.

17 PAYMENT

17.1 The Contractor shall submit a single VAT invoice to the Authority not less than seven days after the end of each month or the relevant period, itemising the Goods provided or supplied in accordance with the Contract during the relevant month or period and the amount payable and applicable rate of charge with reference to the

Price together with any amount to be added in respect of VAT. Subject to Conditions 11, 13 and 16 and paragraphs 17.2 – 17.6 below, payment shall be made to the Contractor within (30) thirty days of the Authority's actual receipt of the invoice.

- 17.2 If the Authority disputes the Contractors entitlement to any part of the amount claimed by the Contractor the Authority shall notify the Contractor in writing within fourteen (14) Business Days of receipt by the Authority of the Contractors Invoice (insofar as the Authority is reasonably able to quantify it) which the Authority disputes (a "Disputed Amount") and submit to the Contractor an Interim Valuation with such supporting evidence as the Authority may have.
- 17.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.
- 17.4 Within fourteen (14) Business Days following receipt of any notice of the Disputed Amounts served by the Authority pursuant to paragraph 17.2 above, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor states that it does agree the Authority shall be entitled to retain on a permanent basis any amounts withheld pursuant to paragraph 17.3; and
- 17.5 If the Contractor responds (pursuant to paragraph 17.4) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to paragraph 17.2, the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 17.6 If the determination of any dispute conducted pursuant to paragraph 17.5 shows that the Authority has withheld any amount which the Contractor was entitled to be paid the Authority shall pay such amount to the Contractor with interest on that amount at the rate of 2% above the Base Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgement.
- 17.7 The Authority shall pay such invoice(s) by BACS (Bank Automated Clearing System) if the Authority so chooses, or any alternative means as agreed between the Authority and the Contractor in writing.
- 17.8 The Contractor shall neither be entitled to any additional payment nor be excused from any obligation or liability under this Contract by reason of any misunderstanding or misinterpretation by the Contractor of the Tender Documents. The Contractor shall promptly bring to the attention of the Authority any matter, which the Contractor finds as not adequately specified or defined in the Tender Documents.

18 **VALUE ADDED TAX**

- 18.1 For the purposes of this Condition, 'tax' means the Value Added Tax introduced by the Finance Act 1972, which is under the care and management of the Commissioners of Customs and Excise.

18.2 Any reference in the Conditions to Price shall be regarded as being exclusive of tax and recovery by the Contractor from the Authority of tax properly chargeable by the Commissioners of Customs and Excise on the Contractor under or by virtue of the Finance Act 1972, or any amendment or re-enactment thereof, if applicable.

19 CONTRACTOR'S INDEMNITY

19.1 The Contractor shall fully indemnify the Authority and keep the Authority fully and effectually indemnified against all loss, damage or injury to anyone or to any property and against all actions, awards, claims, compensations, demands, damages, proceedings, costs, charges, expenses whatsoever suffered or incurred by the Authority (including the costs of transport, labour, administration and legal expenses on an indemnity basis to the Authority) as a result of arising from or in connection with (whether arising in contract, tort, breach of statutory duty or otherwise):

19.1.1 any defect or fault in the Goods supplied;

19.1.2 any act, default or omission of the Contractor in supply of the Goods or performing the Contract;

19.1.3 any failure by the Contractor to comply with any statutory provision relevant to the Goods or the performance of the Contract; or

19.1.4 any breach of the terms of the Contract.

19.2 The Contractor's liability to indemnify the Authority arising under Condition 19.1 above shall be without prejudice to any other right or remedy that the Authority has or may have whether arising under this Contract or otherwise.

19.3 The provisions of this Condition 19 shall survive the expiry or any termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

20 INSURANCE

20.1 Without prejudice to the Contractor's liabilities under Condition 19, the Contractor shall effect and maintain throughout the Contract Period comprehensive and adequate insurances to cover any liability of the Contractor in respect of, arising from or in connection with this Contract (including without limitation):

20.1.1 any loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Contractor in carrying out or failing to carry out any of its obligations under or in accordance with the Contract, and against all actions, awards, claims, compensations, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof; and

20.1.2 any liability arising or under this Contract and/or general Law, or otherwise.

- 20.2 Where the Authority so requires the Contractor shall insure against its liabilities under this Condition 20 with a minimum limit indemnity of such sum as specified in the Specific Conditions.
- 20.3 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or within three days of the Authority's written request, supply to the Authority a copy of the policies (including schedules) of the insurances referred to in this Condition, together with documentary evidence that such insurances are properly maintained.

21 INTELLECTUAL PROPERTY

- 21.1 All Intellectual Property Rights in the Specification, and any other specifications specifically prepared by or on behalf of the Contractor for the Authority in connection with the Contract, shall vest in and remain vested in the Authority absolutely immediately upon creation and be the exclusive property of the Authority.
- 21.2 All Intellectual Property Rights in all documents (including the Tender Documents and Contract Documents) provided by the Authority are vested and remain vested in the Authority.
- 21.3 The Contractor hereby waives and will procure its employees, sub-contractors and agents to waive all moral rights in all the things and materials mentioned in Condition 21.1 and other things and materials in which the Intellectual Property Rights either have been or will be assigned to the Authority under this Contract.
- 21.4 The Contractor warrants that the supply of the Goods and any documentation, things, goods and materials produced or supplied by the Contractor under or in connection with this Contract do not and shall not infringe any Intellectual Property Rights or any rights of any third Party.
- 21.5 The Contractor shall fully indemnify the Authority and keep the Authority fully and effectively indemnified on demand against all actions, awards, claims, compensations, demands, proceedings, damages, costs, charges and expenses whatsoever arising from, in respect of, or in connection with any breach by the Contractor of this Condition 21.
- 21.6 The provisions of this Condition 21 shall survive the expiry or any termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

22 DISPUTE RESOLUTION PROCEDURE

- 22.1 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner. The Contractor shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authority who shall be informed forthwith in writing of all complaints received and of all steps taken in response thereto.
- 22.2 The Contractor shall, subject to the direction of the Authority, deal with complaints related to the Goods supplied in accordance with the Authority's Corporate Complaints Procedure, details of which are available from the Authorised Officer.

- 22.3 The parties shall attempt in good faith to negotiate a settlement to any dispute or difference (including any dispute as to the construction or meaning of any words in these Conditions, the existence, validity or termination of this Contract) between them arising out of or in connection with the Contract (“Dispute”) within 20 working days of either party notifying the other of the Dispute such efforts shall involve negotiations between their respective senior executives having authority to settle the dispute or difference.
- 22.4 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 22.5 If a Dispute cannot be resolved by the parties pursuant to Condition 22.3, the Dispute shall be referred to mediation pursuant to the procedure set out in Condition 22.8 unless the Authority considers that the Dispute is not suitable for resolution by mediation.
- 22.6 The performance of the Contract and/any Order shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (including its employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 22.7 No party may commence or pursue any legal proceedings or arbitration in relation to any Dispute until the procedures set out in Conditions 22.1 to 22.5 have been exhausted.
- 22.8 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 22.8.1 A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 working days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 working days from the date of the proposal to appoint a Mediator or within 10 working days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
- 22.8.2 The parties shall within 10 working days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 22.8.3 Unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 22.8.4 If the parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.

22.8.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

22.8.6 A Dispute may be referred to the court if the parties fail to reach agreement in the structured negotiations within 60 working days of the Mediator being appointed, or such longer period as may be agreed by the parties.

22.8.6.1 A Dispute may be referred to the court if: -

Without prejudice and strictly subject to Condition 22.7, if all the parties so agree in writing, the parties may opt to refer the Dispute to arbitration in accordance with the Arbitration Act 1996 as an alternative to court proceedings. The Contractor and the Authority shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.

22.9 The Authority considers that the Dispute is not suitable for resolution by mediation where:

22.9.2 the mediation has terminated, or

22.9.3 the Authority has attempted to settle the Dispute by mediation but the Contractor has failed to participate in the mediation

23 VARIATIONS AND VALUATIONS

23.1 The Authority shall be entitled to issue to the Contractor variation orders or instructions in writing or in case of urgency orally, provided that the Authority confirms oral instructions in writing as soon as it is practicable, where such variations have been provided for within the Contract.

23.2 Variation orders issued by the Authority may require the addition, suspension, reduction or cessation of the Goods and/or the provision of emergency supplies.

23.3 Instructions issued by the Authority may require the Goods to be provided in such a manner as the Authority reasonably requires or at additional Locations.

23.4 The valuation of any variations shall be made by the Authority by reference to the Price. Where the variation is not of similar character to or is not undertaken under similar conditions to the Contract, a valuation shall be made at fair rates and prices having regard to the Price.

23.5 Without prejudice to Conditions 12 and 13 if the Contractor fails to comply with any variation instructions pursuant to Conditions 23.1 to 23.4 above, the Authority is entitled, after giving the Contractor not less than 5 working days written notice, to employ other Contractors to carry out the service under the relevant Order as varied.

24 ASSIGNMENT AND SUB-CONTRACTING

- 24.1 The Contractor shall not without the written consent of the Authority assign sub-contract novate or in any way dispose of all or any of the interest benefits rights obligations and or the burdens of the Contract or any part of the Contract including any call-off order placed pursuant to the Contract.
- 24.2 Any sub-contracting shall not in any way relieve the Contractor from its liabilities under this Contract including any call-off order placed. The Contractor shall be and shall remain fully responsible in respect of its obligations hereunder. Notwithstanding any sub-contracting the Contractor shall be responsible for the acts and omissions of any of its sub-contractors as though those acts and omissions were its own.
- 24.3 The Authority shall be entitled to impose additional terms and conditions in relation to any consent to such assignment sub-contract novation or disposal including a requirement that a guarantee and warranty or other security shall be provided. The Contractor shall procure and obtain collateral warranties from its sub-contractor in a form as prescribed by the Authority and delivered to the Authority duly executed.
- 24.4 The Authority shall require the Contractor to replace a subcontractor where verification has shown that there are compulsory grounds for exclusion, in accordance with the Public Contracts Regulations.
- 24.5 The Authority may require the Contractor to replace a subcontractor where verification has shown that there are non-compulsory grounds for exclusion, in accordance with the Public Contracts Regulations.
- 24.6 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Contract including any call-off order placed pursuant to this Contract, the Contractor shall ensure that all sub-contracts and or contracts for supply of goods that the Contractor enters into in connection with the performance of this Contract and or any call-off order contain a provision:
- 24.6.1 requiring the Contractor to pay the sub-contractor (including the supplier of the Contractor's supply chain) any undisputed sums due from the Contractor within 30 days from the receipt of a valid invoice;
- 24.6.2 requiring the sub-contractor (or the supplier as the case may be) of the Contractor to pay to their own sub-contractor and their supply chain any undisputed sums due from the Contractor's sub-contractor (or the supplier as the case may be) within 30 days from the receipt of a valid invoice; and
- 24.6.3 a right for the Authority to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 24.7 The Contractor shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 24.8 Upon the Authority's request the Contractor shall provide as soon as possible and in any event not later than 14 days of the request a summary with data showing the Contractor's compliance with this condition 24. If the Contractor notifies the Authority or the Authority otherwise discovers that the Contractor has failed to pay a sub-contractor's undisputed invoice (or undisputed invoice of a supplier as the case

may be) within 30 days of receipt, the Authority shall be entitled to publish the details of the late or non-payment (including on the Authority's website and in the press).

- 24.9 The Authority shall be entitled to assign sub-contract novate or otherwise dispose of any of its interest rights obligations benefits and or burdens of the Contract including any call-off order placed (or any part of it/them) without the consent of the Contractor.

25 THIRD PARTY RIGHTS

This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

26 HEALTH AND SAFETY

The Contractor shall comply with and shall ensure and procure that its employees, agents, sub-contractors and their respective employees and agents comply with the requirements of all relevant statutes, regulations, British Standards implementing international or European standards (or the European equivalent), Health and Safety Executive guidance notes and other procedures relevant to health and safety and the performance of this Contract including regulations, codes of practice and policies and procedures (such as Health and Safety at Work) of the Authority.

27 DISCRIMINATION

- 27.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 27.2 The Contractor shall take all reasonable steps to secure the observance of Condition 27 by all employees, agents and sub-contractors of the Contractor and their respective employees and sub-contractors employed in the execution of the Contract.
- 27.3 The Contractor will ensure that its policies and procedures reflect the Equal Opportunity Requirements. The Contractor must ensure that its workforce receives appropriate training in order to understand their roles and responsibilities in implementing the Equal Opportunity Requirements, and to promote equality and prevent discrimination.
- 27.4 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance with the Equal Opportunity Requirements, including if requested, examples of any instructions or other documents, recruitment advertisements or other literature and details of monitoring of recruitment and employees.
- 27.5 In the event of any finding of unlawful discrimination being made against the Contractor or any sub-contractor employed by the Contractor during the term of the Contract by any court or industrial tribunal or of an adverse finding in any formal investigation by the Commission for Racial Equality over the same period.

28 ENVIRONMENTAL REQUIREMENTS

The Contractor shall, when working on the Authority's premises, perform the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

29 CONFIDENTIALITY

- 29.1 The Contractor shall treat all Confidential Information of the Authority as confidential and safeguard it accordingly provided that this Condition does not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to this Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Condition).
- 29.2 The Contractor hereby agrees that it will use such Confidential Information solely for the purposes of this Contract and that it will not, at any time before, during or any time after the completion, expiry or termination of this Contract disclose, divulge the same, allow to be disclosed or divulged, use or allow to be used the same for any other purposes whether directly or indirectly, to any third party without the Authority's prior written consent and shall use its best endeavours to prevent any such disclosure thereof except where disclosure is expressly specified by the terms of this Contract.
- 29.3 The Contractor shall procure and ensure that each of its employees, staff, agents, associates, sub-contractors, consultants and any other persons engaged on any work in connection with this Contract are aware of and comply with the provisions of this Condition and the Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against all actions, costs, awards, claims, proceedings, demands, charges, expenses, loss, damage and liabilities whatsoever which the Authority may suffer, incur or sustain as a result of or in connection with any breach of this Condition or the duty of confidence by any such persons.
- 29.4 The provisions of this Condition 29 shall survive the expiry or any termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

30 PUBLICITY

The Contractor shall not without the prior written consent of the Authority advertise or publicly announce that it is undertaking work for the Authority nor hold itself out in any way as an agent of the Authority.

31 INTERCEPTION OF COMMUNICATIONS

- 31.1 The Contractor acknowledges and accepts that:

- 31.1.1 the Authority's systems enable it to monitor telephone, email, voicemail, internet and other communications made using any Authority equipment including laptops, telephones and mobile phones;
 - 31.1.2 for business reasons, and in order to carry out legal obligations in its role as an employer, use of the Authority's systems (including the computer systems, telephone systems and mobile phone systems), and any personal use of them, may be continually monitored by automated software or otherwise; and
 - 31.1.3 monitoring by the Authority is only carried out to the extent permitted or as required by Law and as necessary and justifiable for business purposes.
- 31.2. The Authority reserves the right to retrieve the contents of email messages or to check telephone or mobile phone or internet usage (including pages visited and searches made) as reasonably necessary in the interests of its business, including for the following purposes (this list is not exhaustive):
- 31.2.1. to monitor whether use of the email system, telephone system, mobile phone system or the internet is legitimate and in accordance with this Clause 31;
 - 31.2.2. to find lost messages or to retrieve messages lost due to computer failure;
 - 31.2.3. to assist in the investigation of alleged wrongdoing; and
 - 31.2.4. to comply with any legal obligation.
- 31.3 The Contractor shall ensure that at all times all of its employees, agents, sub-contractors and sub-consultants engaged by it in connection with the performance of any of its obligations arising under from or in connection with this Contract are notified of the Authority's rights in relation to the monitoring of communications under this Clause 31 and have provided their prior consent to such monitoring by the Authority.

32 DATA PROTECTION ACT

- 32.1 In this Condition 32 "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Processing", "Protective Measures" and "appropriate technical and organisational measures" shall have the meanings as defined in the Data Protection Legislation.
- 32.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and that the Contractor is the Data Processor. The only processing that the Contractor is authorised to do is listed in Schedule **1** by the Authority and may not be determined by the Contractor.
- 32.3 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

- 32.4 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 32.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 32.4.3 32.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services; an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 32.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 32.5 The Contractor shall:
- 32.5.1 process the Personal Data only in accordance with Schedule 1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing Personal Data unless prohibited by Law;
 - 32.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - 32.5.2.1 nature of the data to be protected;
 - 32.5.2.2 harm that might result from a Data Loss Event;
 - 32.5.2.3 state of technological development; and
 - 32.5.2.4 cost of implementing any measures;
 - 32.5.3 ensure that :
 - 32.5.3.1 its staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 1);
 - 32.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any of its staff who have access to the Personal Data and ensure that they:
 - 32.5.3.2.1 are aware of and comply with the Contractor's duties under this clause;
 - 32.5.3.2.2 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - 32.5.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in

writing to do so by the Authority or as otherwise permitted by this Contract; and

32.5.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and

32.5.4 not transfer any Personal Data to any country or territory outside the European Economic Area without the prior written consent of the Authority and unless the following conditions are fulfilled:

32.5.4.1 the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Authority;

32.5.4.2 the Data Subject has enforceable rights and effective legal remedies;

32.5.4.3 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 (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

32.5.4.4 the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

32.5.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Laws to retain the Personal Data.

32.5.6 subject to clause 32.6 notify the Authority immediately if it receives:

32.5.6.1 a Data Subject Access Request (or purported Data Subject Access Request) ;

32.5.6.2 a request to rectify, block or erase any Personal Data;

32.5.6.3 any other request, complaint, communication relating to either Party's obligations under the Data Protection Legislation;

32.5.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

32.5.6.5 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

32.5.6.6 becomes aware of a Data Loss Event.

32.6 The Contractor's obligation to notify under clause 32.5 shall include the provision of further information to the Authority in phases, as details become available.

- 32.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 32.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 32.7.1 the Authority with full details and copies of the complaint, communication or request;
 - 32.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 32.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 32.7.4 assistance as requested by the Authority following any Data Loss Event;
 - 32.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 32.8 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:
- 32.8.1 the Authority determines that the processing is not occasional;
 - 32.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - 32.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 32.9 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 32.10 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- 32.10.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 32.10.2 obtain the written consent of the Authority;
 - 32.10.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 31 such that they apply to the Sub-processor; and
 - 32.10.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

- 32.11 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 32.12 The Contractor make available to the Authority, at reasonable intervals and within twenty one (21) days following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Authority or another auditor mandated by the Authority.
- 32.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 32.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 32.15 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 32.16 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 29 by the Contractor and/or any act or omission of any sub-contractor.
- 32.17 The provisions of this Clause 32 shall apply during the continuance of the Contract and indefinitely after its Termination.

33 FREEDOM OF INFORMATION

- 33.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.
- 33.2 The Contractor shall procure that its employees, agents and sub-contractors shall:
- 33.2.1 transfer the request for information within the meaning of the FOIA or EIR ("Request") to the Authority as soon as practicable after receipt and in any event within two working days of receiving a Request;
- 33.2.2 provide the Authority with a copy of all information within the meaning of S84 of FOIA in its possession or power in the form that the Authority requires within five

working days (or such other period as the Authority may specify) of the Authority requesting that information; and

33.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

33.3 The Authority has absolute discretion for determining whether any information:

33.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

33.3.2 is to be disclosed in response to a Request and in no event shall the Contractor respond directly to a Request unless expressly authorised to do so by the Authority.

33.4 The Contractor acknowledges that the Authority may be obliged under the FOIA or the EIR to disclose information:

33.4.1 without consulting with the Contractor, or

33.4.2 following consultation with the Contractor and having taken its views into account.

33.5 The Contractor shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

33.6 The Contractor acknowledges that any lists or schedules provided by the Contractor outlining commercial sensitive information not for disclosure are of indicative value only and that the Authority may nevertheless be obliged to disclose it in accordance with the FOIA or the EIR.

33.7 The provision of this Condition 33 shall survive the expiry or termination of the Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiry or such termination.

34 RECORD KEEPING

For auditing and national auditing office requirements, the Contractor shall keep and maintain until six years (or twelve years if the Contract is executed as a deed) after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to (and copies of) those records as may be required by the Authority in connection with the Contract.

35 INDUCEMENTS

35.1 As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the supply of the Goods, the performance of the Contract or otherwise, it shall notify the other party.

35.2 The Authority shall have the right to require that the Contractor suspend from any further work on this Contract any person reasonably suspected of fraudulent action or malpractice.

35.3 The Contractor shall not during the Contract Period solicit or receive orders or engage in private transactions with any servant or employee of the Authority for Goods provided under the terms of this Contract.

36 WAIVER

36.1 Failure by the Authority at any time to enforce any one or more of the provisions of this Contract or to require performance by the Contractor of any of the provisions shall not:

36.1.1 constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce any terms and conditions of this Contract; nor

36.1.2 affect the validity of the Contract or any part of it or the right of the Authority to enforce any provision in accordance with its terms.

37 SEVERANCE

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

38 NOTICES

38.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by electronic mail or by sending it by registered post or recorded delivery to the appropriate address or fax number notified to each other.

38.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served 48 hours after it was posted and any notice sent by fax between the hours of 9am and 4pm between Monday and Friday (other than on public or bank holidays) will be deemed to have been served 24 hours after it was despatched provided that the transmission is not returned as undelivered. Fax notice so transmitted outside such hours shall be deemed to have been served on the following working day.

39 AGENCY, PARTNERSHIP

This Contract including any Order placed shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Contract.

40 LAW AND JURISDICTION

This Contract shall be governed by the laws of England and the exclusive jurisdiction of the English courts and the Contractor shall comply at all times with all relevant Laws and regulations including without limitation E.U. legislation.

41 EXECUTION OF FURTHER DOCUMENTS

- 41.1 The Contractor shall at its own costs and expense do and execute any further things and document(s) or procure that the same be done or executed as may be required by the Authority to give full effect to any provisions of this Contract and shall provide all such documents and materials to the Authority within fourteen days of the date of the Authority's written request or such longer period as may be agreed by the Authority in writing.
- 41.2 For the avoidance of doubt, any amendment or variation contained in the Tender or the Method Statement submitted by the Contractor which is inconsistent with the Specification or the Conditions is of no legal effect and does not form part of the Contract, save and except any such amendment or variation expressly and specifically agreed, duly authorised and signed by the Authority in writing as forming part of the Contract **PROVIDED ALWAYS** that such amendments or variations are to be interpreted in same the order of priority as set out in Condition 43.

42 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

43 ORDER OF PRECEDENCE

In the event of and only to the extent of any conflict between the Specification, Instructions for Tendering, the Tender and other documents referred to or attached to the Contract, the conflict shall be resolved in accordance with the following order of precedence:

these Conditions of Contract shall prevail over:

the Specification;

the Schedules;

the Instructing for Tendering;

the Tender and Method Statement;

any other document referred to in this Contract.

44 SUPERSEDE PRIOR AGREEMENT

Without prejudice and subject to Condition 39, this Contract shall take effect in substitution for all previous agreements and arrangements whether written or oral or implied between the Authority and the Contractor relating to the Service and all

such agreements and arrangements shall be deemed to have been terminated by mutual consent with effect from the effective date of this Contract.

45 SURVIVAL OF OBLIGATIONS

On expiry or termination of the Contract (howsoever occasioned) Conditions 7, 11, 13, 16, 19, 20, 21, 23, 25, 29, 30, 31, 32, 33, 35 to 44 shall continue and remain in full force and effect notwithstanding the expiration or termination.

46 EXCLUSION OF AUTHORITY'S LIABILITIES

46.1 Unless provided by Condition 46.2 the Authority shall not under any circumstances be liable to the Contractor for any direct, indirect or consequential loss, charge, or expenses (including loss of profit) and/or liabilities suffered by the Contractor however caused whether in contract, tort, breach of statutory duty or otherwise whatsoever however caused, or in connection with the supply of the Goods or the performance of the Contract.

46.2 Condition 46.2 shall not apply in relation to:

46.2.1 any wilful or fraudulent act or omission of the Authority or any of its employees; and/or

46.2.2 any negligent act or omission giving rise to death or personal injury.

46.3 The Contractor shall immediately notify the Authority of any accident, loss or damage that occurs on the Authority's premises.

47. BUSINESS CONTINUITY PLAN

47.1 The Civil Contingencies Act 2004 requires the Authority to maintain plans to ensure they can continue to perform all of their ordinary functions in the event of an emergency. The Civil Contingencies Act 2004 requires that all organisations which provide services or goods, which underpin the Authority's service provision to the public, must be able to continue to provide the services or goods in the event of an emergency.

47.2 The Contractor shall (and shall procure that any Sub-Contractor shall):

47.2.1 prepare a robust business continuity plan that ensures the continued availability of the Services in the event of an emergency;

47.2.2 disclose to the Authority on request the contents of its business continuity plan (including any revisions made to it from time to time);

47.2.3 allow the Authority's Monitoring Officer from time to time to monitor the business continuity arrangements;

47.2.4 notify the Authority's Monitoring Officer if an incident occurs, which activates the Contractor's business continuity plan (such notification to be given prior to the issue of any notification to press or other media); and

47.2.5 provide the Authority's Monitoring Officer with details of how the incident which resulted in the activation of the business continuity plan as referred to in clause 46.2.4 was managed and any consequential amendments made to the business continuity plan thereafter.

SCHEDULE 1
PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Contractor shall comply with any further reasonable written instructions with respect to processing.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Processing of personal data in relation to the contract will require it to be exchanged for a variety of purposes, including: <ol style="list-style-type: none"> 1. Management and monitoring in the wider context (e.g., contract management meetings, health & safety, rights of audit) 2. Ordering 3. Use of premises and/or facilities; and 4. All other purposes in relation to the contract as reasonably determined by the Authority.
Duration of processing	Duration of the contract.
Nature and purposes of the processing	Receipt, recording, storage, retrieval, use deletion and/or destruction of contact details in relation to the contract management and monitoring. The contractor should only use the personal data for the authorised purposes and no other purpose outside the contract terms.
Type of Personal Data	Contract contact information in relation to those operating and managing the contract, including: Name Business Address Email Address Online communications and/or photographic image for identification only; and Telephone Number No special category data is to be processed as part of this contract.
Categories of Data Subject	Authority Employees, Sub-Contractors, Agents and Representatives Contractor Employees, Sub-Contractors, Agents and Representatives