

**COVENT GARDEN MARKET AUTHORITY**  
**TERMS AND CONDITIONS OF CONTRACT**  
**FOR THE PURCHASE OF GOODS AND/OR SERVICES**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these terms and conditions ("these Conditions"):

**'Applicable Laws'** means all laws, rules and regulations which impose legal, regulatory or other requirements in respect of any of the activities which the Contractor undertakes as part of the Services;

**'Approval'** means the written approval of the Authority's Representative;

**'Authority Data'** means all data and information, in any electronic or tangible form or medium, which are supplied or in respect of which access is granted to the Contractor by the Authority pursuant to the Contract, or which the Contractor is required to generate under the Contract;

**'Authority's Premises'** means the Authority's premises at New Covent Garden Market, London SW8 5NX;

**'Authority's Representative'** means the person appointed by the Authority for the Authority's management of the Contract;

**'Bye-Laws'** means the Bye-Laws in force from time to time at or in relation to the Authority's Premises;

**'Confidential Information'** in relation to either Party means all information (whether written, oral or in electronic form) concerning the business and affairs of that Party which the other Party obtains or receives as a result of the discussions leading up to or the entering into or the performance of the Contract;

**'Contract'** means the contract for the supply of the Goods and/or the provision of the Services of which these conditions form part;

**'Contractor's Personnel'** means all employees or agents of the Contractor who are involved in the supply of the Services to the Authority;

**'Contractor's Representative'** means the person appointed by the Contractor for the Contractor's management of the Contract;

**'DPA'** means the Data Protection Act 1998, and all other Applicable Laws relating to the processing of personal data and privacy;

**'Employee Liabilities'** means remuneration, salaries, wages, liability for holiday pay, relocation expenses, redundancy payments, compensation (including compensation for unfair dismissal), damages, claims, awards, fines, costs, losses,

expenses and all other liabilities of whatsoever nature relating to or in respect of the employment of any person;

**'Force Majeure'** means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventive action by the Party concerned, including governmental regulations, fire, flood, or any disaster, but does not include any industrial action occurring within the Contractor's organisation or within any Sub-Contractor's organisation;

**'Goods'** means the goods (including any instalment of the goods or any part of them) described in the Order, and includes any articles provided in the course of provision of the Services;

**'Intellectual Property Rights'** means any patent, copyright, registered or unregistered design right, database right, registered or unregistered trade mark, rights in relation to confidential information or any other intellectual property rights;

**'Nominated Representative'** means the Authority's Representative or the Contractor's Representative respectively;

**'Order'** means the Authority's purchase order to which these Terms are annexed;

**'Personal Data'** has the meaning given in the DPA;

**'Policies'** means the policies of the Authority relating to the Goods and/or Services as notified to the Contractor from time to time;

**'Price'** means the price of the Goods and/or the charge for the Services;

**'Records'** has the meaning given in Clause 13.1;

**'Regulatory Authority'** means any UK or EU governmental or other regulatory body having jurisdiction over the subject matter of the Contract;

**'Services'** means the services (if any) described in the Order;

**'Service Level Agreements'** means the definitions of the key aspects of the delivery of the Services set out or referred to in the Order;

**'Specification'** means the specification for the Goods and/or Services set out or referred to in the Order;

**'Sub-Contractor'** means a sub-contractor in relation to any of the obligations of the Contractor who receives Approval pursuant to Clause 29.2;

**'TUPE'** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**'Visitors'** means tenants (including their employees and agents), visitors and staff of the Authority together with members of the general public who use the Authority's Premises;

**'Working Day'** means any day other than Saturday, Sunday or a bank or public holiday.

1.2 In these Conditions:

1.2.1 unless otherwise stated, a reference to a statute or statutory provision includes that statute or provision as amended, extended, re-enacted or consolidated from time to time and all statutory instruments or orders made under it;

1.2.2 unless the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting one gender include the others, and words denoting persons include firms, corporations or other legal entities;

1.2.3 the word 'including' shall be interpreted as being without limitation to the generality of any preceding words;

1.2.4 'writing' or any similar expression includes a communication by fax but not e-mail, text message or other forms of electronic communication; and

1.2.5 'the Parties' means the parties to the Contract, and 'Party' means either of them.

1.3 The headings in these Conditions are for convenience only and do not affect their interpretation.

## **2. BASIS OF ORDER**

2.1 The Order constitutes an offer by the Authority to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Authority or subject to which the Order is accepted or purported to be accepted by the Contractor.

2.3 The Order will lapse unless unconditionally accepted by the Contractor in writing within seven days of its date.

2.4 No variation to the Order or these Terms shall be binding unless agreed in writing between the Nominated Representatives of the Authority and the Contractor.

## **3. SPECIFICATIONS**

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Authority to the Contractor or agreed in writing by the Authority.

3.2 Any Specification supplied by the Authority to the Contractor, or specifically produced by the Contractor for the Authority, in connection with the Contract, together with all Intellectual Property Rights in the Specification, shall be the exclusive property of the Authority, and the Contractor assigns with full title guarantee to the Authority all such Intellectual Property Rights for no further consideration, subject only to the payment of the Price. The Contractor shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as required for the purpose of the Contract.

3.3 The Contractor shall not unreasonably refuse any request by the Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Contractor or any third party prior to despatch, and the Contractor shall provide the Authority with all facilities reasonably required for inspection and testing.

3.4 If as a result of inspection or testing the Authority is not satisfied that the Goods will comply in all respects with the Contract, and the Authority so informs the Contractor within seven days of inspection or testing, the Contractor shall take such steps as are necessary to ensure compliance.

3.5 The Goods shall be marked in accordance with the Authority's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

## **4. DELIVERY**

4.1 The Goods shall be delivered to, and the Services shall be performed on the date or within the period stated in the Order, in either case during the Authority's usual business hours.

4.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Supplier shall give the Authority reasonable notice of the specified date.

4.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

4.4 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

4.5 A packing note quoting the number of the Order must accompany each delivery of the Goods and must be displayed prominently.

4.6 The Authority shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Authority.

4.7 The Supplier shall supply the Authority in good time with any instructions or other information required to enable the Authority to accept delivery of the Goods and performance of the Services.

4.8 The Authority may by written notice reject any of the Goods or Services which are not in accordance with the Contract, and any such notice may be given within a reasonable time after the Goods have been delivered or the Services have been carried out.

4.9 The Authority shall not be deemed to have accepted any of the Goods until the Authority has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any fault or defect in the Goods has become apparent, and acceptance shall not limit any claim by the Authority in respect of any fault or defect in relation to the Goods which is not readily apparent.

4.10 The Authority shall not be deemed to have accepted any of the Services until the Authority notifies the Supplier in writing that it is satisfied that they have been carried out in accordance with the Contract, and acceptance shall not limit any claim by the Authority in respect of any fault or defect in relation to the Services which is not readily apparent.

4.11 If the Goods are not delivered or the Services are not completed by the date specified in the Order or, if none is specified, within a reasonable time, then, without limiting any other remedy of the Authority:

4.11.1 the Supplier shall at the written request of the Authority at any time within 12 months after the Goods have been delivered and/or the Services have been carried out promptly remedy any defects in the Goods and/or the Services; and

4.11.2 the Authority shall be entitled to deduct from the Price or (if the Authority has paid the Price) to claim from the Supplier by way of liquidated damages for each week's delay a sum equal to the percentage of the Price specified in the Order.

## **5. RISK AND PROPERTY**

5.1 The property in the Goods shall pass to the Authority on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Authority once payment has been made and the Goods have been appropriated to the Contract.

5.2 Risk of damage to or loss of the Goods shall pass to the Authority on delivery to the Authority in accordance with the Contract.

5.3 The Supplier shall promptly and free of charge either repair or (at the Authority's option) replace any of the Goods which are damaged in transit or which fail to be delivered to the Authority.

## **6. WARRANTIES AND LIABILITY**

6.1 The Supplier warrants to the Authority that the Goods will:

6.1.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier in writing at the time the Order is placed;

6.1.2 be free from defects in design, material and workmanship;

6.1.3 correspond with the Specification and any relevant sample;

6.1.4 comply with all Applicable Laws relating to the manufacture and supply of the Goods; and

6.1.5 be free from any defect in title.

6.2 The Supplier warrants to the Authority that the Services will:

6.2.1 be carried out by appropriately qualified and trained personnel;

6.2.2 be carried out with reasonable care and diligence and to such high standard of quality as it is reasonable for the Authority to expect in all the circumstances;

6.2.3 be carried out within a reasonable time and in any event within the time (if any) specified in the Order; and

6.2.4 comply with all Applicable Laws relating to the provision of the Services.

6.3 The Contractor shall in providing the Goods and/or the Services comply with the Bye-Laws, the Policies and any applicable Service Level Agreements.

6.4 Without limiting any other remedy, if any of the Goods or Services are not supplied or performed in accordance with the Contract, then the Authority shall (without limiting any other right or remedy of the Authority) be entitled:

6.4.1 to require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days;

6.4.2 to withhold payment of any part of the Price; and/or

6.4.3 at the Authority's sole option, and whether or not the Authority has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.

6.5 The Supplier shall indemnify the Authority in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against

or incurred or paid by the Authority as a result of or in connection with:

6.5.1 breach of any condition, warranty or other term given by the Supplier in relation to the Goods or the Services;

6.5.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Authority;

6.5.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

6.5.4 any claim relating to the death or personal injury of any person or the loss of or damage to any property of the Authority or any other person arising out of any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods or carrying out the Services.

6.6 The Supplier shall effect and maintain adequate insurance in respect of general third party public liability, product liability, professional indemnity and employer liability to cover all its potential liability arising out of or in connection with the Contract, and shall provide evidence of such cover on request by the Authority.

6.7 Neither the Supplier nor the Authority shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control.

6.8 The Authority shall not be liable to the Supplier for any loss of profit, contract or goodwill or any indirect, special or consequential loss or damage arising out of or in connection with the Contract, however caused.

## **7. FINANCIAL TERMS**

7.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

7.1.1 exclusive of any applicable value added tax (which shall be payable by the Authority subject to receipt of a VAT invoice); and

7.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address, any costs or expenses relating to the Services and any duties, imposts or levies other than value added tax.

7.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Authority in writing.

7.3 The Authority shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Contractor, whether or not shown on its own terms of sale.

7.4 The Contractor shall account to HM Revenue & Customs for all taxes payable on the Fees and for any national insurance and other statutory contributions, and shall indemnify the Authority against all claims, penalties, surcharges and expenses in respect of the Fees or any such contributions.

## **8. PAYMENT METHOD**

8.1 The Contractor may invoice the Authority on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

8.2 Unless otherwise stated in the Order, the Authority shall pay the Price of the Goods and the Services within 30 days after the end of the month of receipt by the Authority of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Authority.

8.3 The Authority may set off against the Price any sums owed to the Authority by the Contractor.

8.4 If the Authority would otherwise be required to make any payment on a day which is not a Working Day, it may do so on the next Working Day.

8.5 If the Authority fails to pay in full on the due date for payment any amount which is payable to the other Party pursuant to the Contract then, without limiting any other right or remedy of the Party in question under Clause 14 or otherwise, the amount outstanding shall bear interest, both before and after any judgment, at {two (2)} per cent. per annum over Bank of England base rate from time to time from the due date until payment is made in full.

## **9. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

9.1 All databases, designs, documents (in whatever form, and whether recorded electronically or not), drawings, notebooks, photographs and Records which are made by the Contractor or any of the Contractor's Personnel in the course of the provision of the Goods or the Services, any media containing or recording any part of any of the foregoing items, and any Intellectual Property Rights in respect of any of those items, shall belong exclusively to the Authority, and accordingly the Contractor hereby assigns to the Authority (where appropriate, by way of present assignment of future copyright) or (in any other case) agrees to assign to the Authority absolutely on demand, with full title guarantee and for no further consideration, all Intellectual Property Rights in respect of those items.

9.2 The Contractor shall, at the request of the Authority but for no further consideration, do all such things as may be necessary or desirable to vest in the Authority or its nominee the full benefit of the items and Intellectual Property Rights referred to in Clause 9.1, and shall (except to the extent that the Contractor needs to retain the same for the purposes of providing the Services) forthwith deliver up to the Authority all such items as are referred to in Clause 9.1.

9.3 The Contractor shall ensure that the Contractor's Personnel are employed or engaged on terms which are consistent with the provisions of Clause 9.1, and that the Contractor's Personnel waive all moral rights in respect of the items referred to in that Clause.

9.4 If and to the extent that it is not reasonably practicable for the Contractor to provide the Goods or the Services without the use of any Intellectual Property Rights of the Authority, the Authority hereby grants to the Contractor a non-exclusive, irrevocable, non-transferable and royalty-free licence to use such Intellectual Property Rights of the Authority as the Contractor may require for that purpose.

9.5 If and to the extent that it is not reasonably practicable for the Authority to exercise its rights under the Contract or to make full use of the Goods or the Services without the use of any Intellectual Property Rights of the Contractor, other than those referred to in Clause 9.1, the Contractor hereby grants to the Authority a non-exclusive, irrevocable, non-transferable and royalty-free licence to use such Intellectual Property Rights of the Contractor as the Authority may require for that purpose.

9.6 Except as expressly provided in the Contract, each Party shall retain exclusive rights in respect of all Intellectual Property Rights to which it is entitled, and nothing in the Contract shall be construed as granting any right, title, interest or licence to or in respect of the Intellectual Property Rights of either Party.

## **10. AUTHORITY DATA**

10.1 The Contractor acknowledges that the Authority Data and all Intellectual Property Rights of whatever nature in and/or in relation to it shall at all times be and remain the sole property of the Authority, and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data. The Contractor shall not delete or remove any copyright notices contained within or relating to the Authority Data.

10.2 The Contractor and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

10.3 As part of the Services, the Contractor shall:

10.3.1 take such steps as are necessary to ensure that, in the event of any corruption or loss of any Authority Data howsoever caused, it is in a position to restore or procure the restoration of such Authority Data; and

10.3.2 in the event of any corruption or loss of Authority Data and without limiting any other remedies that may be available to the Authority either under the Contract or otherwise, at the request of the Authority restore or procure the restoration of Authority Data to its state immediately prior to its corruption or loss.

## **11. CONFIDENTIALITY AND PUBLICITY**

11.1 Each Party shall at all times keep confidential all Confidential Information of the other Party and shall not disclose any of such Confidential Information to any third party or use the same for any unauthorised purpose, except with the prior written agreement of the other Party, or as required by any Applicable Law or a Regulatory Authority.

11.2 Clause 11.1 shall not apply to any information if it is:

11.2.1 in the public domain otherwise than by failure of the Party in question to comply with Clause 11.1; or

11.2.2 in possession of the Party in question before these confidentiality obligations came into effect; or

11.2.3 obtained from a third party who is free to disclose the same.

11.3 The Contractor acknowledges that the Authority is a public authority for the purposes of the Freedom of Information Act 2000.

11.4 The Contractor shall obtain Approval prior to taking photographs or making publicity releases or announcements (including advertisements or erection of signs) regarding the Contract, the Authority, the Services or the activities of the Contractor relating to its participation in the Contract.

## **12. HEALTH AND SAFETY AND ENVIRONMENTAL PROTECTION**

12.1 The Contractor shall comply with the following provision of this Clause 12 in relation to health and safety and environment protection, in addition to any other requirements of the Contract, and nothing in this Clause shall derogate from the obligations of the Contractor to comply with its responsibilities under any Applicable Laws in so far as they relate to the Services.

12.2 The Contractor shall in relation to all Visitors or other persons affected or likely to be affected by the execution of the Services take such steps as are reasonably practicable to ensure their health and safety.

12.3 The Contractor shall design and implement safe working practices and safe systems of work for all of the activities covered by the Contract and shall make available to the Authority all such health and

safety documentation relevant to the Contract as the Authority shall deem necessary. The practices and systems employed by the Contractor shall comply with all Applicable Laws.

12.4 The Contractor shall be responsible for the training of all of the Contractor's Personnel and shall ensure that its Sub-Contractors and their servants or agents are trained in their responsibilities with regard to safe systems of work. The Contractor shall ensure that appropriate registers and training records relevant to the Contractor's Personnel are maintained and are readily accessible by the Authority's Representative.

12.5 The Contractor shall ensure that the Contractor's policies and practices are extended to cover all Visitors including the Contractor's Personnel and third parties invited on to the Authority's Premises by the Contractor.

12.6 The Contractor shall carry out such tests and examinations of all equipment, plant and materials used in connection with the supply of the Services, as may be necessary to ensure the health and safety of anyone who is in, or is likely to come into contact with, or otherwise be affected by the use of such items.

12.7 The Contractor shall conduct such health and safety audits as the Contractor and the Authority or either of them shall deem necessary so as to meet their obligations with regard to health and safety, the costs of which shall be agreed and borne on an equitable basis as they may agree or, in default of agreement, determined in accordance with Clause 15.

12.8 The Contractor shall make available for inspection by the Authority at all times all registers, Records and other documentation concerning health and safety and/or environmental matters and relating to the Services.

12.9 The Contractor shall send to the Authority a copy of every notice or other communication received from or sent to any person concerning health and safety and/or environmental matters and relating to the Services.

12.10 The Contractor shall give the Authority written notice within ten (10) days prior to the removal from and/or delivery of anything which is toxic or explosive or otherwise hazardous to the health or safety of persons, property or the environment. The notice shall identify the hazards and give full details of the precautions to be taken when using, handling or otherwise coming into contact with such thing together with details of the safe manner of use, handling, transport and storage. The Contractor shall also ensure that at the time of removal and/or delivery every such thing is suitably packed and is identified on the outside as hazardous.

12.11 The Contractor shall use the best practicable means to prevent noxious or offensive emissions (including noise) while in the course of executing the

Services and shall render harmless and inoffensive any such emissions that cannot be prevented.

12.12 The Contractor shall not treat, keep or dispose of any waste produced by the Contractor as a result of the Services in a manner likely to cause harm to the health and safety of any person or harm to the environment and shall comply with every statutory duty which is relevant.

12.13 The Contractor shall take such steps as are reasonably practicable to avoid or, where avoidance is not possible, to minimise the harm to the environment in the provision of the Services.

12.14 The Contractor shall ensure that all of the Contractor's Personnel and its Sub-Contractors and their servants and agents comply with the provisions of this Clause 12.

### **13. RECORDS AND INSPECTIONS**

13.1 The Contractor shall keep complete, accurate and up-to-date records of all activities carried out by it in relation to and for the purposes of providing the Services and as required for compliance by the Authority or the Contractor with all Applicable Laws or the requirements of any Regulatory Authority ('Records').

13.2 The Contractor shall supply the Authority with copies of all Records in a form reasonably required by the Authority and at the intervals specified in Appendix I, and otherwise within seven (7) Working Days of the Authority's written request for a copy of such Records.

13.3 The Contractor shall at the request of the Authority and upon reasonable notice allow duly authorised representatives of the Authority, any Regulatory Authority, or the Authority's external auditors (or procure that they are allowed) to inspect, copy and/or audit the Records and/or the manner of provision of the Services, and for these purposes to enter upon the Contractor's premises (including administration offices, shops, warehouses and any other locations involved in the provision of the Services), and those of its Sub-Contractors, under the supervision of the Contractor for the purpose of confirming compliance with the Contract.

13.4 The Contractor shall provide the Authority, the Regulatory Authority in question or the Authority's external auditors with such further assistance as they may reasonably require, provided that it does not materially affect the Contractor's ability to provide the Services in the normal course.

13.5 If the inspection identifies areas where the Contractor is not complying with the Contract, the Contractor shall forthwith rectify the failure and take the necessary steps to ensure its future compliance with the Contract.

## **14. TERMINATION**

14.1 The Authority may terminate the Contract by notice in writing to the Contractor with immediate effect where:

14.1.1 the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

14.1.2 the Contractor makes any composition or arrangement with or for the benefit of its creditors, or makes any conveyance or assignment for the benefit of its creditors; or

14.1.3 the Contractor passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by a solvent amalgamation or reconstruction), or the court makes a winding-up order in respect of the Contractor, or an application is made for, or any meeting of its directors or members resolves to appoint an administrator or to make an application for an administration order in relation to it, or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

14.1.4 the Contractor is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

14.1.5 any similar event occurs under the law of any other jurisdiction within the United Kingdom.

14.2 Either Party may terminate the Contract by written notice to the other with immediate effect if the other Party commits a breach of any provision of the Contract and, if the breach is capable of remedy, has not remedied the breach to the satisfaction of the Party giving the notice within thirty (30) days, or such longer period as may be specified by the Party in question, after issue of a written notice specifying the breach and requesting it to be remedied.

14.3 For the purposes of Clause 14.2, a breach of any provision of the Contract shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not of the essence).

## **15. DISPUTE RESOLUTION**

15.1 Subject to Clause 14, where a dispute arises under or in connection with the Contract, the aggrieved Party's Nominated Representative shall in the first instance notify the other Party's Nominated Representative in writing of its concerns. Both Parties shall seek to agree a reasonable timescale for such dispute resolution.

15.2 Both Parties shall at all times use their best endeavours to resolve any dispute in a timely and satisfactory manner, and in accordance with any agreed timescale, but if they are unable to do so within the agreed timescale (or, in the absence of any agreed timescale, within thirty (30) days) either Party shall be entitled to refer the dispute for resolution to an arbitrator in accordance with Clause 26.

15.3 Nothing in this Clause 15 shall restrict the right of either Party to seek from a court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## **16. CONSEQUENCES OF TERMINATION**

16.1 On the termination of the Contract for any reason the Contractor shall:

16.1.1 return to the Authority all Confidential Information, Personal Data and Authority Data obtained or produced in the course of providing the Services, and supply the Authority with copies of all Records relating to the provision of the Services (to the extent that they have not already been supplied to the Authority);

16.1.2 forthwith deliver to the Authority upon request all the Authority's property (including but not limited to materials, documents, information, and access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any of its Sub-Contractors and in default of compliance with this Clause the Authority may recover possession thereof, and the Contractor hereby authorises the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Contractors or Sub-Contractors where any such items may be held;

16.1.3 assist and co-operate with the Authority and any new contractor appointed by the Authority to ensure an orderly transition of the Services (or any similar services); and

16.1.4 promptly provide all information concerning the Services which may reasonable be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or any new Contractor of similar Services to conduct due diligence.

16.2 The termination of the Contract for any reason shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such termination and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination.

16.3 The provisions of this Clause 16, and any other provision of the Contract which is expressed to continue after termination, shall survive the termination of the Contract for any reason.

## **17. CONTRACTOR'S PERSONNEL**

17.1 The Contractor shall ensure that a sufficient number of the Contractor's Personnel is available from time to time in order to provide the Services in accordance with the Contract.

17.2 The Contractor shall ensure that the Contractor's Personnel:

17.2.1 have the necessary skill, qualifications, training and expertise to provide the Services in accordance with the Contract; and

17.2.2 are properly supervised.

17.3 The Authority reserves the right to refuse admission to the Authority's Premises to any of the Contractor's Personnel whose presence on the Authority's Premises would in the reasonable opinion of the Authority be undesirable.

17.4 The Contractor shall indemnify the Authority for any damage to or loss of any property of the Authority, whether on the Authority's Premises or otherwise, or of any Visitor or any other person on the Authority's Premises, to the extent that the damage or loss is caused by any wilful or negligent act or omission of the Contractor or any of the Contractor's Personnel.

17.5 The Contractor shall maintain up-to-date personnel records on the Contractor's Personnel including their immigration status and shall, if and when directed by the Authority, provide the Authority with such information on the Contractor's Personnel as the Authority may reasonably request, together with the names and addresses of all persons (other than the Contractor's Personnel) who it is expected may require admission to the Authority's Premises in connection with the Services or otherwise in connection with the Contract, specifying the capacities in which they are concerned with the Services or otherwise in connection with the Contract. The Contractor shall ensure at all times that it has the right to provide this information under all Applicable Laws including the DPA.

17.6 The Contractor shall indemnify the Authority against:

17.6.1 all Employee Liabilities in respect of the Contractor's Personnel arising prior on or after the termination of the Contract by reason of; and

17.6.2 remuneration, salaries, wages, liability for holiday pay, relocation expenses, redundancy payments, compensation (including compensation for unfair dismissal), damages, claims, awards, fines, costs, losses, expenses and all other liabilities of whatsoever nature relating to or in respect of the employment of any person;

## **18. FORCE MAJEURE**

18.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its

obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of three (3) months, either Party may terminate the Contract by notice in writing with immediate effect.

18.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by a Sub-Contractor or an agent of the Contractor shall be regarded as due to Force Majeure only if that Sub-Contractor or agent is itself prevented by Force Majeure from complying with an obligation to the Contractor.

18.3 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Clause 18.2, it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

18.4 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

## **19. LIABILITY**

19.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

19.2 Nothing in the Contract affects the liability of either Party for fraudulent misrepresentation.

## **20. WARRANTIES, REPRESENTATIONS AND INDEMNITIES**

20.1 The Contractor warrants and represents to the Authority that:

20.1.1 it has the authority to enter into the Contract;

20.1.2 the signatory to the Contract for and on behalf of the Contractor is authorised and fully empowered to execute the Contract on the Contractor's behalf;

20.1.3 the entry into and performance of the Contract by the Contractor will not breach any contractual or other obligation owed by the Contractor to any other person, any rights of any other person or any other legal provision;

20.1.4 the entry into and performance of the Contract by the Contractor require no governmental or

other approvals or, if any such approval is required, it has been obtained;

20.1.5 it will at all times during the term of the Contract comply with the terms of and maintain in force any necessary governmental or other approvals, consents, notifications, registrations or other legal requirements for the performance of its obligations under the Contract;

20.2 The Contractor shall indemnify and keep indemnified the Authority fully against all losses, damages, costs, expenses and any other liabilities whatsoever awarded against or incurred by the Authority arising out of, in respect of or in connection with:

20.2.1 any breach by the Contractor of any of the warranties and representations in Clause 20.1;

20.2.2 the death or injury of any person or loss of or damage to any property arising out of provision of the Services or otherwise in connection with the Contract, except to the extent that the death, injury, loss or damage is caused or contributed to by the negligence of the Authority; and

20.2.3 any claim (actual or threatened) in respect of any infringement or alleged infringement of any Intellectual Property Rights arising by reason of the use in the course of the provision of the Goods or the Services or which arise out of or in connection with the Contractor's obligations under the Contract.

## **21. INSURANCE**

21.1 The Contractor warrants that it has in force insurance policies with a reputable insurance company in respect of all risks which may be incurred by the Contractor arising out of the Contractor's performance of the Contract, including death or personal injury, or loss of or damage to property of the Authority and third parties. Such policies shall be satisfactory to the Authority which shall include, but not be limited to, the types and amounts set out in Clause 21.3, and shall contain a waiver of subrogation rights in favour of the Authority. The Contractor shall on demand provide the Authority with Certificates of Insurance in accordance with Clause 21.1. All such Certificates shall be provided within five (5) days of such a request. Failure to provide such Certificates may be taken by the Authority to indicate that the Contractor has failed to meet its obligations to provide the insurance cover required under the Contract. The Contractor shall also provide the Authority with updated Certificates on the renewal anniversary of any policies required hereunder.

21.2 The Contractor shall give immediate written notice to the Authority and all insured Parties in the event of cancellation or material change which may affect the Authority's or any insured party's interest.

21.3 The insurance policies referred to in Clause 21.1 shall be:

21.3.1 Public Liability Indemnity insurance with a minimum limit of indemnity Five Million Pounds (£5,000,000) for each claim, or such higher limit as the Authority may reasonably require from time to time.

21.3.2 Employers' liability insurance with a minimum limit of indemnity of Five Million Pounds (£5,000,000) for each claim, or such higher limit as may be required by Applicable Laws or as the Authority may reasonably require from time to time.

21.4 Any excess or deductibles under such insurance shall be the sole and exclusive responsibility of the Contractor.

21.5 All such policies of insurance shall be with an EU insurer of repute on normal commercial terms and shall:

21.5.1 be endorsed to preclude any rights of subrogation against the Authority or any employee or agent of the Authority; and

21.5.2 be endorsed where possible under the relevant insurance policy designating the Authority as additional named insured.

21.6 The Contractor shall deal speedily and efficiently with all claims submitted to it by third parties, which shall be dealt with either by its own staff or by referring such claims to its insurers.

21.7 The Contractor shall not be entitled to settle any claim or action in respect of which the Contractor had an obligation to insure and to indemnify the Authority without the prior written consent of the Authority (such consent not to be unreasonably withheld) and the Contractor shall if so required by the Authority assign to it the right to defend any claim or action on behalf of the Contractor and shall grant the Authority such reasonable assistance as it may require in defending any claim or action.

21.8 The Contractor shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this clause or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

21.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that shall be adequate to enable the Contractor to satisfy any liability referred to in Clause 21.1.

## **22. CORRUPT GIFTS OR PAYMENTS**

22.1 The Contractor shall not offer or give, or agree to give, to any employee or representative of the Authority 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 the relation to the obtaining or execution of this

or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any other such contract.

22.2 The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

### **23. DISCRIMINATION**

23.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any Applicable Laws relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment or the provision of the Services.

23.2 The Contractor shall take all reasonable steps to secure the observance of Clause 23.1 by all servants, employees or agents of the Contractor and all Sub-Contractors, and their servants, employees or agents and Contractors employed in the execution of the Contract.

### **24. FRAUD**

24.1 The Contractor shall take all proper steps to prevent fraud generally in relation to the Services or otherwise in connection with the Contract and, in particular, fraud on the part of the Contractor's Personnel, or the personnel of any Sub-Contractor.

24.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

24.3 The Contractor shall indemnify and keep indemnified the Authority fully against all losses, damages, costs, expenses and any other liabilities whatsoever awarded against or incurred by the Authority arising out of, in respect of or in connection with any fraud on the part of the Contractor's Personnel, or the personnel of any Sub-Contractor.

### **25. GOVERNING LAW AND JURISDICTION**

25.1 The Contract (including any non-contractual claim) shall be governed by and construed in accordance with English Law.

25.2 Subject to Clause 26, in respect of any dispute under or arising out of the Contract (including any non-contractual claim), the Authority and the Contractor hereby agree to submit to the jurisdiction of the English Courts.

### **26. ARBITRATION**

26.1 In the event that any dispute between the Parties cannot be resolved in accordance with Clause 15, the following provisions shall apply:

26.1.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

26.1.2 the Authority shall give a written notice of arbitration to the Contractor ('the Arbitration Notice'):

(a) stating that the dispute is referred to arbitration; and

(b) providing details of the issues to be resolved.

26.2 The tribunal shall consist of a sole arbitrator to be agreed by the Parties.

26.3 If the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Authority under Clause 26.1.2, or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the Authority.

26.4 The arbitration proceedings shall take place in London and in the English language.

26.5 The arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

### **27. ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the Parties relating to its subject matter, and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that nothing in this Clause shall exclude liability in respect of any fraudulent misrepresentation.

### **28. SCOPE OF AGREEMENT**

Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor.

### **29. ASSIGNMENT AND SUB-CONTRACTING**

29.1 The Contract is personal to the Contractor, which shall not without prior written consent of the Authority assign, mortgage, charge or otherwise transfer to another person, or create any trust over, any of its rights under the Contract.

29.2 The Contractor shall not sub-contract or in any other way transfer or delegate any of the Contractor's obligations under the Contract any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

29.3 Where the Authority has consented to the appointment of a Sub-Contractor, a copy of the sub-contract shall be sent by the Contractor to the Authority immediately it is issued.

29.4 The Contractor shall ensure that any Sub-Contractor which it uses to provide any part of the Services is noted on the Contractor's insurance policy or policies and is covered by such policy or policies in accordance with this Clause 21 or carries its own insurance which complies with this Clause 21 to the satisfaction of the Authority.

29.5 The Contractor shall fully indemnify the Authority and its servants and agents in respect of any loss (excluding consequential loss) or damage howsoever arising from any act or omission of the Contractor or any of its Sub-Contractors or its or their servants or agents. The Authority reserves the right to offset any loss or damage against any sums owed to the Contractor.

29.6 The Contractor shall not use the services of self-employed individuals without prior Approval.

**30. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Except as otherwise provided in the Contract, a person who is not a party to the Contract has no right under the Contract (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract, but nothing in the Contract shall affect any right or remedy of a third party which exists or is available otherwise than as a result of that Act.

**31. WAIVER**

31.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

31.2 No waiver of any provision of the Contract shall be effective unless it is expressly stated to be a waiver and notified to the other Party in writing.

31.3 A waiver of any right or remedy arising from a breach of Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**32. VARIATION**

32.1 The Contract may not be varied or amended except in writing signed by the Authority's Representative and by the Contractor's Representative.

32.2 All variations and amendments shall be in the form of an addendum to the Contract.

**33. SEVERABILITY**

33.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

33.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the

purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**34. REMEDIES CUMULATIVE**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**35. FURTHER ASSURANCE**

Each Party shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of the Contract.

**36. NOTICES**

36.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

36.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party at the registered or principal office of the Party in question. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

36.3 Either Party may change its address for service by notice in accordance with this Clause 36.

**37. COSTS**

The Parties shall bear their own costs of and incidental to the preparation, execution and implementation of the Contract.

**38. COMMENCEMENT**

The Contract may be executed in more than one copy and shall not come into force until each Party has executed such a copy in identical form and exchanged it with the other Party.