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The logo for CBC a Commercial Procurement Alliance. It features the text 'CBC a Commercial Procurement Alliance' in a bold, italicized, black font. To the right of the text is a red logo consisting of two stylized, interlocking 'B' shapes.

Call-Off Terms & Conditions

for

Managed ICT Services Framework Y18018

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Call off Terms & Conditions Y18018

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Call Off Terms & Conditions

These Call off Terms & Conditions together with the Framework Terms and Conditions (Y18018) comprise the contractual provisions which apply to all orders that are entered into between the Customer and the Supplier and which govern the provision of Managed ICT Services to the Customer.

1 Definitions:

Academy	Means a school in England which is directly funded by the Department for Education (DfE) and independent of local authority control.
Agreement/Framework Agreement	Means the overarching Framework Agreement between the Contracting Authority and the Supplier from which Orders and Individual Contracts are made and that shall include all terms, conditions and requirements as stated within and under which Contracts may be entered into by Customers and the Supplier(s).
Alternative Supplier	Means an Alternative Supplier on the Agreement utilised due to failure in Contractual obligation by another Supplier on the Framework.
Authorised Participant	Means the organisation who takes delivery of the Goods and/or Services. This may also be a direct Customer or a Customer of an authorised Participating Authority.
Call Off Contract	The Call Off Contract is the Contract formed between the Customer and the approved Supplier to the Framework entered into after the completion of a Further Competition.
Contract/Individual Contract	Means the individual Agreement for Goods/ Services supplied between the Customer and the Supplier.
Contract Period	Means the total length of the Contract/Individual Contract as agreed between the Customer and Supplier.
Contract Price	Means the price paid to a Supplier for the Goods/Services, inclusive of the agreed Management Fee and any On-Cost
Contracting Authority	Means the public sector body that has agreed to take responsibility for the tender process, Contract formation and overarching responsibility for the Framework Agreement.
Customer(s)	Means all public sector bodies who access and use the Agreement and who shall take full responsibility for their own individual Contracting processes.
Default	Means any breach of the obligations of either party or any default, act, omission,

	negligence or statement of either party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of the Agreement and/or individual Order/Contract and in respect of which such party is liable to the other
Framework Price	Means the price paid to a Supplier for the Goods/Services, inclusive of the agreed Management Fee but exclusive of any On-Cost
Goods/Services	Means the Goods and/or Services to be provided by the Supplier in accordance with the Framework/Call-Off Terms & Conditions and/or Individual Contract/Order.
Material Breach	Means a breach that has serious consequences on the outcome of the Contract.
Participating Authority	Means any public body authorised to use the Agreement, as detailed in Section 1 of the Invitation to Tender, who shall have responsibility for managing their own Individual Contracts let under the Agreement.
Price	Means the cost paid to a Supplier for the Goods/Services, on submission of an accurate invoice
Purchase Order/Order	Means any Order/Contract for Goods/Services that is made between the Customer and Supplier under this Agreement and that shall abide by the terms, conditions and requirements of both the Agreement and Individual Contract/Order as specified from time to time.
Sub-Contractor	Means an arrangement where more than one supplying party agree to cooperate to advance their mutual interests, or where a contractor is to provide an agreed portion of the Goods/Services which form part of the Contract.
Supplier	Means the Supplier appointed as part of the tender process to the Agreement whom has agreed to supply the Goods/Services under the terms, conditions and requirement of the Agreement and Individual Contracts/Order.

1.2 Interpretation

The interpretation and construction of the Contract including any schedules and appendices shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and visa versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 the words “include”, “includes” and “ including” are to be construed as if they were immediately followed by the words “without limitation”;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees
 - 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, modification, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted:
 - 1.2.6 headings are included in the Contract for ease of reference only and shall not affect the interpretation of construction of the Contract; and
 - 1.2.7 reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.3 At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in this Contract shall create or imply and form of employment, offer of employment, a relationship of agency, partnership or joint venture between the Customer and the Supplier, consequently neither the party to the Contract will be able to act in the name of the other party unless specifically mentioned within the Contract.
- 1.4 Unless otherwise stated within the Contract between the parties, the obligation on the Customer is that stated under the Contract and nothing in the Contract shall act as an obligation upon or in any way constrain or hinder the Customer in any other capacity, nor shall the exercising of the duties or powers of the Customer in any other capacity lead to a liability under the Contract (however arising) on the part of the Customer to the Supplier.

2. Due Diligence

The Supplier must carry out the due diligence process prior to Individual Contract commencement date.

The Supplier must satisfy itself of all relevant details relating to the suitability of the existing and future operating environment; operating processes and procedures and the working methods of the Customer; ownership, functionality, capacity, condition

and suitability of Customer equipment for use in the provision of the Goods and/or Services and existing contracts and liabilities which are to be novated to the Supplier.

The Supplier must advise the Customer in writing of each aspect of the operating environment that is not suitable for the provision of Goods and/or Services, the action needed to remedy each aspect and a timetable for and costs of those actions.

The Supplier shall not be entitled to recover any additional costs resulting from any unsuitable aspects of the operating environment, misinterpretation of the requirements of the Customer or failure by the Supplier to satisfy itself as to the accuracy of the due diligence information.

3. Inaccuracy of Information

The Supplier will be responsible for ensuring they are in possession of the correct information from the Customer and for the accuracy of all information supplied to the Customer in connection to the supply of Managed ICT Services. The Supplier shall be liable to pay the Customer for costs incurred due to inaccuracies, discrepancies, omissions, and damage therein.

4. Conflict of Interest

The Supplier shall take all steps necessary to ensure that a conflict of interest does not occur that will have an impact on the Customer. The Customer is to be satisfied that the Supplier is compliant with this request. The Supplier must promptly notify the Customer giving full details if any conflict arises or may arise. The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or where the Customer deems it necessary to take steps to address the conflict between the pecuniary or personnel interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. Any actions taken in relation to this clause shall not prejudice or affect any right of action or remedy, which shall be accrued or hereafter be accrued to the Customer.

5. Prevention of Fraud

5.1 The Supplier shall take all reasonable steps necessary to ensure prevention of any fraud by staff of the Supplier (including all shareholders, directors, members) in connection with monies received from the Customer.

5.2 The Supplier shall notify the Customer as soon as practically possible, if it has reason to believe that Fraud has occurred, or is likely to occur.

5.3 If the Supplier commits any fraud to this or any other Contract in place with the Customer then the Customer may:

5.3.1 terminate the Contract with immediate effect, by giving the Supplier written notice. Recover from the Supplier any direct costs incurred resulting from the termination including sourcing from an Alternative Supplier, for the remainder of the Contract period, any loss as a consequence of the breach of this clause.

- 5.4 This clause shall apply during the Individual Contract period and for a period of 2 years after the Individual Contract expiry date.

6. Price and Variation

- 6.1 The Price shall be the Price agreed on award of the Contract.

The Price shall include:

- 6.1.1 the delivery of the Goods/Services and any supporting documentation
 - 6.1.2 the provision of the supporting Services; and
 - 6.1.3 all levies and taxes payable in respect of any costs incurred to facilitate the delivery of the Managed ICT Services, Associated Services and documentation.
- 6.2 The Price shall not include Value Added Tax (VAT) which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.
- 6.3 The Contract Price shall only be varied:
- 6.3.1 due to a specific change in Law in relation to which the parties agree that a change is required to all or part of the Call Off Contract Price.
 - 6.3.2 where all or part of the Call Off Contract Prices are reduced as a result of a reduction in the Framework Prices

7. Delivery

- 7.1 The Supplier shall provide the Goods/Services, on the date(s) specified in the Contract/Purchase Order.
- 7.2 The Goods/Services shall be delivered in the manner and quantity required by the Customer.
- 7.3 The Supplier shall, where applicable, be responsible for arranging carriage of the Goods/Services at the entire cost and risk of the Supplier.
- 7.4 The Supplier shall use all reasonable endeavours to deliver the Goods/Services to the premises stated in the Order (and/or, in the case of electronic delivery of Goods/Services, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date specified on the Contract.
- 7.5 The Goods/Services shall be deemed not to have been delivered unless and until the Customer has signed a delivery note acknowledging delivery (and, if required by the Contract/Purchase Order, installation) of the Goods/Services; (and for the avoidance of doubt where the Goods/Services

are to be delivered by instalments the relevant delivery note for deemed delivery shall be the one signed on delivery of the final instalment) or, in the case of electronic delivery of Goods, the Supplier receives confirmation of receipt.

- 7.6 The Supplier shall notify the Customer immediately on becoming aware that it may be unable to deliver or install the Goods/Services to or at the premises specified in the Contract/Purchase Order on the day and/or time specified in the Contract or in accordance with any instructions specified.
- 7.7 In the event of any failure on the part of the Supplier to deliver the Goods/Services in accordance with this Contract/Purchase Order the Customer may (without prejudice to its other rights under this Contract/Purchase Order):
 - 7.7.1 terminate this Contract/Purchase Order as set out in Clause 26 (Termination); or
 - 7.7.2 specify by written notice to the Supplier such revised delivery date(s)/days and/or times as it sees fit, or
 - 7.7.3 Order from an Alternative Supplier. Any additional costs will be passed to the Contracted Supplier.
- 7.8 In the case that any of the Goods/Services delivered by the Supplier are not in accordance with the terms of this Contract/Purchase Order the Customer shall have the right to reject such Goods/Services within a reasonable time and to purchase Goods/Services elsewhere as near as practicable to the same specification and conditions as circumstances shall permit without prejudice to any other right which the Customer may have against the Supplier; and the making of payment shall not prejudice the Customer right of rejection.
- 7.9 The Customer shall have the right to require the Supplier, at the Supplier's own risk and expense, to collect and replace any rejected Goods and if the Supplier does not remove the rejected Goods within the advised timescale the Customer shall be entitled to arrange for the removal of the Goods and to charge the cost of the removal to the Supplier.
- 7.10 In the event that the Customer rejects any Goods it may (at its absolute discretion):
 - 7.10.1 terminate this Contract/Purchase Order or any part thereof without prejudice to its existing rights and remedies; and/or
 - 7.10.2 recover as a debt due from the Supplier all extra costs and expenses arising from or in connection with the rejection of the Goods including, but not limited to, the cost of purchasing alternative as close to the specification as possible Goods/Services from elsewhere.

8. Technical Support

With effect from the acceptance date, as agreed between both parties, the Supplier shall provide, in respect of all of the Goods/Services provided, a level of technical support as defined within the Contract/Purchase Order.

9. Replacement and Substitution of Personnel

If requested by the Customer to maintain nominated or trained staff to deliver Goods/Services then the Supplier shall take all reasonable actions to ensure that nominated staff are maintained to ensure compliance with the request. If Staff are replaced or substituted by the Supplier then the Supplier should notify the Customer and ensure that the replaced or substituted staff are aware of the requirements whilst at the Customer or other nominated premises.

10. Title and Risk

10.1 Risk in the Goods shall not pass to the Customer unless and until a delivery note has been signed by an authorised officer of the Customer. If the Goods are rejected by the Customer for any reason at any time after delivery has been affected then risk in the Goods shall revert to the Supplier immediately upon the Customer notifying the Supplier of such rejection of the Goods.

10.2 Title to the Goods being purchased by the Customer shall pass to the Customer upon payment of the relevant invoice(s) in accordance with clause 18.2. This excludes any Supplier equipment used to provide the Service where title will remain with the Supplier.

10.3 In the instance that a Customer changes its operating status, i.e. Funded School to Academy, all rights and support as previously granted in relating to the Goods/Services will be transferred at no cost to the new body.

11. Warranties

The Supplier hereby represents and warrants to the Contracting Authority that:

11.1 The Supplier sells the Goods/Services with full title guarantee and free from all encumbrances;

11.2 On delivery to the Customer, the Goods/Services will be in strict accordance with the specification for the Goods/Services set out or referred to in this Call Off Contract;

11.3 The Goods/Services when delivered to the Customer will:

11.3.1 be of a satisfactory quality and free from any defects in material or workmanship;

11.3.2 comply with the appropriate United Kingdom EU or International standards and with all applicable statutory requirements and regulations;

11.3.3 the Goods/Services will be fit and sufficient for the purpose intended by the Customer as specified in the Call Off Contract and

will comply with all applicable laws and regulations in force in England and Wales;

11.3.4 the Goods/Services do not and will not infringe any intellectual property right of any third party.

11.4 Each of the representations and warranties contained in clause 11.1 above (hereinafter referred to as "Warranties") shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other Warranties or by any other term of this Call Off Contract.

11.5 The Supplier acknowledges that the Contracting Authority has entered into this Agreement in reliance on the Warranties.

11.6 The Warranties shall continue in full force and effect notwithstanding delivery or payment for the Goods/Services and notwithstanding termination of this Call Off Contract for any reason.

12. Duration of Call Off Contract

12.1 In accordance with the 'Public Contract Regulations 2015' Contracts based on a Framework Agreement are to be awarded before the end of the term of the Framework Agreement itself. The duration of the Individual Contract does not need to coincide with the duration of the Framework Agreement, but might, as appropriate, be shorter or longer. In particular, the Customer is allowed to set the length of Individual Contracts based on a Framework Agreement taking account of factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four years is included or where extensive training of staff to perform the Contract is needed

13. Service Levels and Service Credits

13.1 The service levels stated in the original tender document, along with any additional service levels or credits stated in the Individual Contract/Purchase Order will be applicable to this Contract/Purchase Order.

14. Intellectual Property Infringement

14.1 The Supplier will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Goods/Services by the Customer that infringes the patent copyright registered design or trade mark rights of the said third party (an 'Intellectual Property Infringement') provided that the Customer:

14.1.1 as soon as practicable gives notice to the Supplier of any Intellectual Property Infringement upon becoming aware of the same

14.1.2 gives the Supplier the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or

compromise the said claim or action except upon the express instructions of the Supplier; and

- 14.1.3 acts in accordance with the reasonable instructions of the Supplier and gives to the Supplier such assistance, as it shall reasonably require in respect of the conduct of the said defence.
- 14.2 The Supplier shall reimburse the Customer its reasonable costs for the avoidance of doubt (including the cost of any time spent by the employees of the Customer in connection with this matter) incurred in complying with the provisions of Clause 14.1 above.
- 14.3 The Supplier shall have no liability to indemnify the Customer in respect of an Intellectual Property Infringement if the same results from:
 - 14.3.1 any unauthorised alteration modification or adjustment made by the Customer to the Good/Services without the prior consent of the Supplier; or
 - 14.3.2 the combination connection operation or use of the Goods/Services with any other equipment or documentation not endorsed by the Supplier.
- 14.4 In the event of an Intellectual Property Infringement the Supplier shall be entitled at its own expense and option either to:
 - 14.4.1 procure the right for the Customer to continue using the Goods/Services; or
 - 14.4.2 make such alterations modifications or adjustments to the Goods/Services that they become non-infringing without incurring a material diminution in performance or function; or
 - 14.4.3 replace the Goods/Services with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 14.5 If the Supplier in its reasonable judgement is not able to exercise any of the options set out at clauses 14.4.1, 14.4.2 or 14.4.3 above within 14 days of the date it received notice of the Intellectual Property Infringement then it shall at its own expense retake possession of the Goods/Services upon payment to the Customer of:
 - 14.5.1 the Price less depreciation calculated at a rate of one tenth of the Price for each full year from the acceptance date, agreed by the parties (and pro rata for any period of less than a year);
 - 14.5.2 the actual costs of the Customer (including costs for time of its own employees) reasonably incurred in the preparation of the place of use to the extent that the Customer no longer intends to use the same as the installation or its preparation is not suitable for alternative Goods/Services;

14.5.3 any special delivery costs; and

14.5.4 all other damages that the Customer has suffered as a result of the said Intellectual Property Infringement.

14.6 The provisions of Condition 15 shall not apply to this clause 14.

15. Supplier liability

15.1 The following provisions, and the provisions of clauses 16.2.1.1 to 16.2.1.5 set out the Suppliers entire liability (including any liability for the acts and omissions of its employees, agents and Sub-Contractors) to the Customer in respect of.

15.1.1 any breach of its Contractual obligations arising under this Contract; and

15.1.2 any representation statement or tortuous act or omission including negligence arising under or in connection with this Contract

15.2 Any act or omission on the part of the Supplier or its employees, agents or Sub-Contractors falling within clause 15.1 shall for the purposes of this clause 15 be known as an 'event of Default'.

15.3 The Supplier's liability to the Customer for:

15.3.1 death or injury resulting from its own or that of its employees' agents or Sub Contractors' negligence; and

15.3.2 all damage suffered by the Customer as a result of the implied statutory undertakings as to title quiet possession and freedom from encumbrances

Shall not be limited.

15.4 The Supplier shall not be liable to the Customer in respect of any event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same.

15.5 If a number of events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Contract.

15.6 The Customer will afford the Supplier an agreed number of days up to 30 days in which to remedy any event of Default exclusive of the Service Level Agreement (SLA) associated Key Performance Indicators (KPI's) and the Escalation process.

- 15.7 Except in the case of an event of Default arising under clause 15.3 the Supplier shall have no liability to the Customer in respect of any direct losses in the event of Default unless the Customer shall have served notice of the same upon the Supplier within 2 years of the date it became aware of the circumstances giving rise to the event of Default or the date when it ought reasonably to have become so aware.
- 15.8 Nothing in this clause 15 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 15.9 In order to cover its liabilities the Supplier shall maintain, and require that any permitted Sub-Contractors maintain, as a minimum throughout the Contract Period;
- 15.9.1 Product Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims
- 15.9.2 Public Liability Insurance – limit £10 million (Ten million pounds sterling) per claim or series of related claims
- 15.9.3 Employer’s Liability Insurance – limit £10 million (ten million pounds sterling) per claim or series of related claims
- 15.9.4 The Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier.
- 15.9.5 any other insurances required under any applicable legislation or at time of Contract.
- If supplying a technical or professional supporting service to the products:
- 15.9.6 Professional Indemnity Insurance – limit £1 million (One million pounds sterling) per claim or series of related claims, if supplying an associated service.
- 15.10 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to above the Customer may:
- 15.10.1 at its discretion arrange suitable cover. Any premiums paid by the Customer to affect such insurance on behalf of the Supplier shall be recoverable from the Supplier or, at the Customer option, deducted from any money owed to the Supplier.
- 15.10.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) days of notification.
- 15.10.3 cancel this Contract with immediate effect.

15.11 If the Customer requires a variant level of insurance then this will be requested at the Further Competition/Purchase Order stage of the Contract. Failure to revise the insurance level may cause exclusion from the process. The Supplier is not to offer any level of insurance below that stated in clauses 15.9.1, 15.9.2, 15.9.3, and 15.9.6.

16. Indemnity

16.1 The Supplier will indemnify the Customer against:

16.1.1 breaches in respect of any matter arising from the supply of the Goods/Services resulting in any successful claim by any third party to the extent of the Supplier negligence.

16.2 The Customer and Supplier Indemnity shall be limited as follows:

16.2.1 Subject to clause 15.3 the Supplier's total aggregate liability shall in no event exceed two million pounds (£2,000,000) or a sum equal to one hundred and twenty-five per cent (125%), whichever is lower, of the Price in the Contract Period in respect of all direct liability loss damages costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Customer as a result of or in connection with:

16.2.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in clause 11;

16.2.1.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods/Services;

16.2.1.3 any claim made against the Customer in respect of any liability, loss, damage, cost or expense sustained by the Customers employees, Sub-Contractors or agents or by any third party to the extent that such liability loss damage cost or expense is caused by or relates to or arises from the Goods;

16.2.1.4 any negligent act or omission of the Supplier or its employees agents or Sub Contractors in supplying and delivering the Goods/Services which causes financial loss to the Customer; or

16.2.1.5 any liability which the Customer incurs under the Consumer Protection Act 1987 as a result of the acts or omissions of the Supplier in providing the Goods/Services.

- 16.3 The Contracting Authority/Customer will:
- 16.3.1 take all reasonable steps to mitigate its losses in relation to any claim under that indemnity;
 - 16.3.2 notify the Supplier as soon as reasonably possible after becoming aware of any claim under the indemnity and specifying the nature of that claim in reasonable detail;
 - 16.3.3 not make any admission of liability, agreement or compromise in relation to any such claim under the indemnity without the prior written consent of the Supplier; and
 - 16.3.4 giving to the Supplier the sole authority to avoid, dispute, compromise or defend the indemnity claim.

17. Conditions Applicable

These Call-off Terms and Conditions and the Framework Terms and Conditions shall apply to the purchase of the Goods/Services under Framework Y18018 by the Customer from the Supplier to the exclusion of any which the Supplier may purport to apply under any sales offer or similar document.

18. Payment

- 18.1 The Customer shall only make payment after delivery of all the Goods/Services specified in the relevant Contract/Purchase Order and where delivery is by instalments payment shall be made after delivery of each instalment and after receipt by a duly authorised officer of the Customer of a detailed invoice showing correct invoice value (and where VAT is payable, a VAT invoice) clearly stating the Contract/Purchase Order Number as appropriate.
- 18.2 Where the provisions of clause 18.1 have been complied with payments will normally be made by the Customer within 30 days of the tax point of the invoice(s). The Customer reserves the right to withhold payment where the provisions of clause 18.1 have not been complied with.
- 18.3 The Contracting Authority shall not be held responsible for payments due from individual Customers, Member Authorities and/or Participating Authorities.

19 Monetary Union

Should the United Kingdom enter into the European Monetary Union during the duration of this Contract, any additional costs, duties and responsibilities falling directly on the Supplier will be borne by the Supplier.

20 Set-Off and Counterclaim

The Customer may set off against any sums due to the Supplier, whether under this Purchase Order/Contract or otherwise, any lawful set-off or counterclaim to which the Customer may at any time be entitled.

21 Notices

21.1 Any notice to be served on either of the parties by the other shall be in writing and sent by first class post to the address of the relevant party shown at the head of this Purchase Order/Contract or by electronic mail and shall be deemed to have been received by the addressee within seventy two (72) hours of posting or twenty four (24) hours if sent by by electronic mail to the correct address For the purpose of address for each Party:

21.2 For the Customer – The address set out on the Purchase Order / Contract.

21.3 For the Supplier – The address set out in the Framework Agreement.

21.4 Either Party may change the contact address for Service by notifying the Party by serving a notice using this clause.

22 Severance

Any provision of this Purchase Order/Contract that is or may be void or unenforceable shall, to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Contract that shall remain in force to the fullest extent possible.

23 Waiver

No waiver or forbearance by either party on any occasion (whether express or implied) in enforcing any of its rights under this Agreement shall prejudice its rights to do so in the future.

24 Assignment

The Supplier shall not assign or otherwise dispose of any part of its rights and obligations under this Purchase Order/Contract without the explicit written authority of the Customer that will not be unreasonably withheld. The Customer may assign or otherwise dispose of any part of its rights and obligations under this Purchase Order/Contract as it deems fit.

25 Force Majeure

Neither party to the Contract shall be liable for any Default due to any act of God, War, Fire, Flood, Drought, Tempest or other event beyond the reasonable control of either party. If a state of Force Majeure exists to the extent that the individual Contract/ Purchase Order cannot be executed for a continuous period of six (6)

months the Contract shall be automatically terminated with no liability on either party.

26 Termination

26.1 The Customer may terminate the Agreement with justifiable cause, which will be determined by the parties, on giving the Supplier (sixty) 60 days' written notice.

26.2 The Customer shall be entitled immediately to terminate this Contract and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier is in breach of any of the terms of this Contract.

26.3 The Customer may terminate the Purchase Order/Contract at any time before all of the Goods/Services are delivered by giving written notice and thereafter:

26.3.1 the Supplier shall cease to be bound to deliver and the Customer shall cease to be bound to receive delivery of any further Goods/Services:

26.3.2 the Customer shall cease to be bound to pay that part of the Price that relates to the Goods/Services that have not been delivered, unless a termination fee (which cannot exceed the value of the remaining period of the Individual Contract/Order) has been agreed as part of the Individual Contract/Order:

26.3.3 the Customer shall not be liable for any loss or damage whatsoever arising from such termination.

26.4 The Customer may terminate this Contract at any time, where;

26.4.1 in the case of an individual, a petition is presented to the Supplier, and not dismissed within 14 days, for becoming bankrupt or making a composition or arrangement with his creditors or;

26.4.2 in the case of a company, having a winding up order made or except for the purposes of reconstruction or amalgamation) a resolution for voluntary winding up is passed or;

26.4.3 a Receiver or Manager Administrator or Administrative Receiver is appointed or possession taken of the Supplier's assets by or on behalf of the holders of any debentures secured by a floating charge and the Contracting Authority shall be entitled to repayment of any monies paid in advance.

26.4.4 a proposal is made for a voluntary arrangement within Part 1 of the insolvency Act 1986 or any other composition or arrangement with, or assignment for the benefit it creditors or shareholders.

26.4.5 The Supplier becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986.

- 26.5 In any event similar to those listed in this clause 26 which occur under law of or other jurisdiction or in the case where the Supplier is an individual;
- 26.5.1 the Supplier is unable to pay its debts or has no prospect of doing so within the meaning of Section 268 of the Insolvency Act 1986; or
- 26.5.2 a creditor or encumbrancer attaches or takes possession of, or a distress execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Suppliers assets and such attachment or process is not discharged within 14 days; or
- 26.5.3 the Supplier suspends or ceases, or threatens to suspend or cease to carry out on all or a substantial part of his business.
- 26.6 The Supplier shall notify the Customer as soon as practically possible if the Supplier undergoes a change of control. The Customer may terminate the Contract by notice within 6 months of: -
- 26.6.1 being notified that a Change Control has occurred; or
- 26.6.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control;
- But shall not be allowed to terminate where an approval was granted prior to the Change of Control.

Termination on Default

- 26.7 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if: -
- 26.7.1 The Supplier has not remedied the Default to the requirements of the Customer within Twenty (20) working days, or such period as may be specified by the Customer, after issue of a written notice stating the Default and requesting the Default to be remedied; or
- 26.7.2 the Default is not capable, in the reasonable opinion of the Customer, of remedy; or
- 26.7.3 the Default is a Material Breach of the Contract.
- 26.8 If the Customer fails to pay the Supplier undisputed sums of money when agreed by Contract, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums then: -
- 26.8.1 Interest on payment shall not be subject to the Late Payment of Commercial Debts Interest Act, 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations, 2002 until the completion of the Dispute Resolution

Process or receipt of the decision from the adjudicator, in accordance with the agreed Dispute Resolution process.

26.8.2 All undisputed sums due from either of the parties to the other which are not paid on the due date agreed in the Contract shall bear interest from day to day at the annual rate of 2% over the base lending rate of the Bank of England.

26.9 If the Customer refuses to pay the outstanding undisputed payments to the Supplier, then the Supplier will be able to terminate the individual Contract after a period of ninety (90) days of the date of such written notice, save that the such right of termination shall not apply where the Customer is exercising its rights under clause 18 (Payment).

26.10 Where a Contract Period is specified in the Contract then the Contract shall come to an end at the end of such Period (if it has not already come to an end or been terminated before that date).

26.11 All termination or coming to an end of this Contract shall be without prejudice to any claims for prior breach of this Contract and all of the conditions which expressly or impliedly have effect after termination of this Contract for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

Framework Agreement

26.12 Individual Contracts will continue to run even if the Framework Agreement is terminated unless terminated by the Customer of the individual Order under the Call off terms clause 15.

Termination by the Supplier

26.13 The Supplier shall have the right to terminate the Contract /Purchase Order, by giving (ninety) 90 days notice:

26.13.1 if any software becomes unable of accepting upgrades, patches etc or the ongoing service invoices are not paid within the agreed time period and process, or any other fundamental changes to the requirement, not agreed by the Supplier.

Consequences of Termination

26.14 Where the Customer terminates the Contract under clause Termination on Default (26.7 – 26.11) and then makes other arrangements for the supply of the products the Customer may recover the reasonable costs, from the original Supplier, incurred to make those arrangements and any additional costs incurred during the remainder of the original Contract period. Where the Contract is terminated under the clause Termination on Default (26.7 – 26.11) no further payments shall be payable to the Supplier by the Customer, until the Customer has established the final cost for making these arrangements.

27. Disruption

- 27.1 The Supplier shall take reasonable care to ensure that the performance of the Contract by the Supplier does not disrupt the operations of the Customer, its employees and any of its Suppliers working under control of the Customer.
- 27.2 The Supplier shall inform the Customer as soon as practically possible of any potential or actual industrial action that will cause effect to the Customer and delivery to the Contract.
- 27.3 In the event of any Industrial action or anticipated delay the Supplier will seek acceptance of alternative plans to ensure supply to the Contract. If the proposals are deemed as insufficient to ensure Contract delivery, this will be deemed as a Material Breach and the Contract maybe terminated in accordance with clause 26.7
- 27.4 If the disruption is caused by direction of the Customer then the Customer will make an allowance to the Supplier of any proven expense, for direct cost, that has been agreed by the Customer, as a direct result of the disruption.

28. Recovery upon termination

On termination of the Contract for any reason, the Supplier shall;

- 28.1 Return to the Customer all confidential Information and any IPRs belonging to the Customer that are in the Suppliers or its Sub-Contractors possession
- 28.2 Deliver to the Customer all property, including materials, documents, information etc. that has been provided by the Customer.
- 28.3 Where the end of the Contract arises due to the Suppliers Default, the Supplier shall provide all assistance to complete the Clause 28.1 and 28.2 free of charge and within timescales stated. If this is not complied with the Supplier shall pay the Customer additional costs to achieve the stated recovery dates.
- 28.4 compliance with Clause 28.1 and 28.2 shall be within 5 working days from Termination of the Contract.

29. Bribery, Corruption and Collusion

- 29.1 The Customer shall be entitled immediately to terminate this Agreement with the Supplier and to recover from the Supplier the amount of any loss resulting from such termination if:
 - 29.1.1 the Supplier shall have offered to give or agreed to give to any person any gift or consideration at any time as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract or any other Contract with the Customer or for showing or

forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Customer.

29.1.2 the like acts shall have been done by any person employed by the Supplier or acting on his behalf (whether with or without the knowledge of the Supplier).

29.1.3 In relation to any Contract with the Customer the Supplier or persons employed by him or acting on his behalf shall have committed any offence under the Public Bodies Corrupt Practices Act 1889 the Prevention of Corruption Acts 1906 to 1916 or have given any fee or reward the receipt of which is an offence under the Local Government Act 1972 Section 117.

29.1.4 The Supplier, when tendering fixed or adjusted the amount of the tender under or in accordance with any agreement or arrangement with any other person or before the time specified for the return of tenders:

29.1.4.1 communicated to a person other than the Customer the amount or the approximate amount of his tender (except where the disclosure in confidence of the appropriate amount of his tender was essential to obtain insurance premium quotations required for the preparation of his tender).

29.1.4.2 entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any tender to be submitted:

29.1.4.3 offered or paid to give or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

29.2 For the purpose of this clause the expression "loss" shall include the reasonable cost to the Customer of the time spent by its officers in terminating this Contract/Purchase Order and in making alternative arrangements for the supply of the Goods/Services.

30. Official Secrets Acts 1911 to 1989, Section 18/2 of the Finance Act 1989

30.1 The Supplier shall comply with and shall ensure that its staff comply with, the provisions of: -

30.1.1 The Official Secrets Act 1911 to 1989; and

30.1.2 Section 182 of the Finance Act 1989

30.2 In the event that the Suppliers staff fail to comply with this clause, the Customer reserves the right to terminate the Contract immediately, by giving written notice to the Supplier.

31. Confidentiality

- 31.1 Each Party shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 31.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Contract:
- 31.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- 31.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants' otherwise than for the purposes of the Contract.
- 31.3 Where it is considered necessary in the opinion of the Customer, the Supplier shall ensure that staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.
- 31.4 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Contract.
- 31.5 The provisions of Clauses 32.1 to 32.4 shall not apply to any Confidential Information received by one Party from the other:
- 31.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
- 31.5.2 which was in the possession of the other Party previous to entering into the Contract
- 31.5.3 that is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure:
- 31.5.4 is independently developed without access to the Confidential Information.
- 31.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act (FOIA), the Code of Practice on Access to Government Information or the Environmental Information Regulations.

- 31.6 Nothing in this Condition shall prevent the Customer:
- 31.6.1 disclosing any Confidential Information for the purpose of:
 - 31.6.1.1 the examination and certification of the Customer's accounts; or
 - 31.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
 - 31.6.2 disclosing any Confidential Information obtained from the Supplier:
 - 31.6.2.1 to any other department, office or agency of the Crown; or
 - 31.6.2.2 to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Contract.
 - 31.6.2.3 provided that in disclosing information under subparagraph 31.6.2.1 or 31.6.2.2 the Customer discloses only the information, which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 31.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract/Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 31.8 In the event that the Supplier fails to comply with this Condition 31, the Contracting Authority reserves the right to terminate the Agreement and/or the Customer reserves the right to terminate the Contract/Purchase Order by notice in writing with immediate effect.
- 31.9 The Supplier and the Customer hereby undertakes to the other that during the currency of this Contract/Purchase Order and for the period of 12 months following upon its termination or expiry it will not directly or by its agent or otherwise and whether for itself or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.
- 31.10 For the purposes of the Customer's undertaking under this clause 31 the information shall be deemed to include all information (written or oral) concerning the Purchase Order requirement. The provisions under this clause 31 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

32. Freedom of Information

- 32.1 The Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and cooperate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 32.2 The Supplier shall and shall ensure that its Sub-Contractors shall
- 32.2.1 transfer the request for information to the Customer as soon as practicable after receipt and in any event within two working days of receiving a request for information;
- 32.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within five working days (or such other period as the Customer may specify) of the Customer requesting that information; and
- 32.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 32.3 The Customer shall be responsible for determining at its absolute discretion whether:
- 32.3.1 the information is exempt from disclosure under the Freedom of Information Act and the Environmental Information Regulations
- 32.3.2 the information is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 32.4 The Supplier acknowledges that the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:
- 32.4.1 without consulting with the Supplier, or:
- 32.4.2 following consultation with the Supplier and having taken its views into account.
- 32.5 The Supplier shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time. The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with Clause 32.4.

33. Data Protection

- 33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is to be authorised by the Contracting Authority and/or Customer and may not be determined by the Contractor.
- 33.2 The Contractor shall notify the Contracting Authority and/or Customer immediately if it considers that any of the Contracting Authority and/or Customer's instructions infringe the Data Protection Legislation.
- 33.3 The Contractor shall provide all reasonable assistance to the Contracting Authority and/or Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority and/or Customer, include:
- 33.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 33.4.1 process that Personal Data only in accordance with such agreement as stated in 33.1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Contracting Authority and/or Customer before processing the Personal Data unless prohibited by Law;
 - 33.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Contracting Authority and/or Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 33.4.3 ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

- (C) 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 Contracting Authority and/or Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 33.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Contracting Authority and/or Customer has been obtained and the following conditions are fulfilled:
- (i) the Contracting Authority and/or Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Contracting Authority and/or Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Contracting Authority and/or Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Contracting Authority and/or Customer with respect to the processing of the Personal Data;
- 33.4.5 at the written direction of the Contracting Authority and/or Customer, delete or return Personal Data (and any copies of it) to the Contracting Authority and/or Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 33.5 Subject to clause 33.6, the Contractor shall notify the Contracting Authority and/or Customer immediately if it:
- 33.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 33.5.2 receives a request to rectify, block or erase any Personal Data;
 - 33.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 33.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 33.5.5 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
 - 33.5.6 becomes aware of a Data Loss Event.
- 33.6 The Contractor's obligation to notify under clause 22.5 shall include the provision of further information to the Contracting Authority and/or Customer in phases, as details become available.

- 33.7 Taking into account the nature of the processing, the Contractor shall provide the Contracting Authority and/or Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 22.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 33.7.1 the Contracting Authority and/or Customer with full details and copies of the complaint, communication or request;
 - 33.7.2 such assistance as is reasonably requested by the Customer to enable the Contracting Authority and/or Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 33.7.3 the Contracting Authority and/or Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 33.7.4 assistance as requested by the Contracting Authority and/or Customer following any Data Loss Event;
 - 33.7.5 assistance as requested by the Contracting Authority and/or Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority and/or Customer with the Information Commissioner's Office.
- 33.8 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:
- 33.8.1 the Contracting Authority and/or Customer determines that the processing is not occasional;
 - 33.8.2 the Contracting Authority and/or Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 33.8.3 the Contracting Authority and/or Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 The Contractor shall allow for audits of its Data Processing activity by the Contracting Authority and/or Customer or the Contracting Authority and/or Customer's designated auditor.
- 33.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 33.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 33.11.1 notify the Contracting Authority and/or Customer in writing of the intended Sub-processor and processing;
 - 33.11.2 obtain the written consent of the Contracting Authority and/or Customer;
 - 33.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 22 such that they apply to the Sub-processor; and

33.11.4 provide the Contracting Authority and/or Customer with such information regarding the Sub-processor as the Contracting Authority and/or Customer may reasonably require.

33.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

33.13 The Contracting Authority and/or Customer 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 Agreement).

33.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority and/or Customer 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.

34. Rights of Third Parties

A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract but this does not affect any right or remedy of a third party that exists or is available apart from such Act.

35. Publicity

35.1 The Supplier shall not, without prior written permission of the Customer advertise or publicly announce that the Supplier is undertaking work for any Customer and shall take responsible steps to ensure that its servants, employees, agents, Sub-Contractors, Suppliers, professional advisors and consultants comply with this clause.

35.2 The Customer shall be entitled to publicise in accordance with legal obligation upon the Customer, including any examination of the Contract by an Auditor.

35.3 The Supplier shall not do anything to damage the reputation of the Customer or bring the Customer into disrepute.

36. Security

36.1 The Supplier shall comply with all reasonable requests from the Customer whilst delivering to the Customer's premises or premises under the control or responsibility of the Customer.

36.2 The Customer shall provide to the Supplier all information available to ensure that the Supplier can comply with clause 36.1.

37. Records and Audit Access

- 37.1 The Supplier shall keep all full and accurate records and accounts appertaining the Contract for one year after the date of Contract termination, or as long as required by the Contract.
- 37.2 The Supplier shall ensure that all accounting records are kept in accordance with good accounting practise.
- 37.3 The Supplier shall on request allow the Customer and its Auditors such access to Contract related documentation as may be required from time to time.
- 37.4 Documentation relating to accounts and specifically identified records as requested by the Customer and its Auditor must be made available to the Customer as identified and for a period of one year after expiry of the Contract.
- 37.5 The Customer will make all reasonable endeavours to ensure that any audit of the Supplier causes minimal delay or disruption to the Supplier. The Supplier accepts that direct control of the Auditor is outside the control of the Customer.
- 37.6 Subject to the Customer's rights on Confidential Information the Supplier will provide the Auditors with all reasonable assistance to complete the Audit.
- 37.7 both Parties agree that there will be no cost to the Contract, unless a Material Breach is identified in which case the Supplier will reimburse the Customer with all costs incurred in relation to that audit and subsequent action in relation to the identified Material Breach.

38. Transfer and Sub-Contracting

- 38.1 The Supplier shall not assign, novate, sub-contract or in any way dispose of the Contract or any part of it without written prior approval from the Customer, which will not be unnecessarily withheld.
- 38.2 The Supplier shall be responsible for all acts, and omissions of its Sub-Contractors.
- 38.3 Where approval has been given to the Supplier to engage Sub-Contractors, a copy of the sub-contract shall be made available to the Customer.
- 38.4 subject to Clause 38.6 the Supplier may assign or novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
 - 38.4.1 any Customer
 - 38.4.2 Any body established by the Crown or under statute in order to substantially perform any functions that had previously been performed by the Customer.

38.4.3 Any Private/Third sector body which substantially performs the functions of the Customer.

Provided that any such assignment, novation or other disposal shall not increase the burden of the Suppliers obligations under the Contract.

38.5 Any change to the legal status of the Customer shall not, subject to clause 38.6, affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Customer.

38.6 If the rights and obligations are assigned, novated or otherwise disposed of under the Contract relating to clause 38.4 to a body which is not a Contracting body or if there is a change in the Legal status of the Customer, such as it ceases to be a Contracting Authority, in the remainder of the clause both bodies will be referred to as '**the Transferee**': -

38.6.1 the rights of termination of the Customer in Clause 26 shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency or Default of the Transferee; and

38.6.2 the transferee shall only be able to assign, novate, or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

38.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier, which relates to the performance of the Suppliers obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such confidential Information only for the purpose relating to the performance of the Suppliers obligations under the Contract and for no other purposes and shall take all steps to ensure that the Transferee gives a confidential Information undertaking in relation to the Confidential Information.

38.8 Each of the Parties shall at its own cost carry out, or use reasonable endeavours to carry out, whatever further actions, including the issue of further documentation that the other Party requires, from time to time, for the purpose of giving the other party the full benefit of the provisions of the Contract.

39. Variation

39.1 Subject to the provisions of this Clause 39, the Customer may request a variation to Goods/Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "variation".

39.2 The Customer may request a variation by completing and sending the variation form attached at Appendix A ("Change Control Notice") to the Supplier giving sufficient information for the Supplier to assess the extent of the variation and any additional cost that may be incurred. The Supplier shall respond to a request for a variation within the time limits specified in

the Change Control Notice. Such time limits shall be reasonable having regard to the nature of the Order.

39.3 In the event that the Supplier is unable to provide the Variation to the Goods/Services or where the Parties are unable to agree a change to the Contract Price, the Customer may: -

39.3.1 agree to continue to perform their obligations under the Contract without the Variation; or

39.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 46.

39.4 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

40. Remedies in the event of inadequate performance

40.1 Where a complaint is received about the standard of Goods/Services or about the manner in which any Goods/Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Suppliers obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 26 Termination - (Termination on Default) of the Contract.

40.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 26 – Termination – (Termination on Default), do any of the following:-

40.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Goods/Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Goods/Services in accordance with the Contract;

40.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods/Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods/Services;

40.2.3 terminate, in accordance with Clause 25 – Termination - (Termination on Default), the whole of the Contract; and/or

- 40.2.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods/Services by the Supplier or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods/Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods/Services.
- 40.3 If the Supplier fails to supply any of the Goods/Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Working Days of the Customer's instructions or such other period of time as the Customer may direct.
- 40.4 In the event that the Supplier: -
- 40.4.1 fails to comply with Clause 39.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- 40.4.2 persistently fails to comply with Clause 40.3 above;
- The Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.
- 40.5 Without prejudice to any other right or remedy which the Customer may have, if any Goods/Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract, the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods/Services have been accepted by the Customer: -
- 40.5.1 to rescind the Order;
- 40.5.2 to reject the Goods/Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods/Services so returned shall be paid forthwith by the Customer;
- 40.5.3 at the Customer's option to give the Supplier the opportunity at the Suppliers expense to either remedy any defect in the Goods/Services or to supply replacement Goods/Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 40.5.4 to refuse to accept any further deliveries of the Goods/Services but without any liability to the Customer;
- 40.5.5 to carry out at the Suppliers expense any work necessary to make the Goods/Services comply with the Contract; and
- 40.5.6 to claim such damages as may have been sustained in consequence of the Suppliers breach or breaches of the Contract.

41 Cumulative Remedies

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.

42 Monitoring of Contract Performance

The Supplier shall comply with the monitoring arrangements set out in the Contract/ Order Form including, but not limited to, providing such data and information as the Customer may be required to produce under the Contract.

43 Entire Contract

43.1 This Contract (as amended from time to time), together with any document expressly referred to in any of its terms and conditions, contains the entire Contract between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of this Contract.

43.2 The Supplier confirms that, in agreeing to enter into this Contract, it has not relied on any representation save insofar as the same has expressly in this Contract been made a representation and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Contract, save that the agreement of the Supplier contained in this Clause 43.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of this Contract.

43.3 In the event of any conflict between the Order the clauses in the Contract and any documentation referred to in those clauses of the Contract the conflict shall be resolved in accordance with the following order of precedence: -

43.3.1 the Contract/Purchase Order

43.3.2 the Call Off and Framework Terms and Conditions

43.3.3 any other documentation referred to in the Call Off and Framework Terms & Conditions.

43.4 The Contract maybe executed in counterparts each of which when actioned will constitute an original. All constituent parts shall constitute the whole and the same instrument.

44 Diversity

Throughout the duration of this Contract the Supplier shall and in addition shall ensure that its Sub-Contractors shall discharge their obligations under this Contract

and supply the Goods/Services in accordance with their responsibilities under the Equalities Act 2010 encompassing the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission and shall in addition discharge its obligations under this Contract and provide the Goods/Services in a manner consistent with the Customer's Policies and Guidelines.

45. Acceptance of Conditional Tender

- 45.1 If a Contract is entered into following the submission and acceptance of a conditional tender by the Customer, the Customer reserves the right to remove such condition at anytime during the term of the Contract without penalty or incurring additional cost by the giving of 30 days' notice in writing.
- 45.2 The Supplier in accepting the Customer's request for removal of said condition shall continue to provide the remaining element of the Contract in accordance with the terms as stated in the Contract.
- 45.3 If the Supplier rejects the Customer request for removal of said condition or wishes to increase the cost of delivery of the remaining Software or service then the Customer reserves the right to terminate the Contract by the giving of notice in accordance with the Termination Clause 26 contained herein.

46. Dispute Resolution Procedure

- 46.1 The parties shall attempt to resolve any disputes (other than those relating to the termination of this Contract in whole or in part) arising under or in relation to this Contract by initially following the Escalation Procedure, in the event the Escalation Procedure fails to achieve agreement or in exceptional circumstances the Customer reserves the right to refer the matter to the Dispute Resolution Procedure identified below.
- 46.2 If the parties have failed to resolve a dispute by following the Escalation Procedure, then the Customer authorised representative and the Suppliers Managing Director shall hold formal discussions during a period of twenty (20) working days to attempt to resolve the dispute in good faith. If the Customer authorised representative and the Suppliers Managing Director determine in good faith that resolution through continued discussions does not appear likely within such twenty (20) working day period, then the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.
- 46.3 The specific format for the discussions shall be determined at the discretion of the parties, but may include the preparation of agreed statements of fact or written statements of position.
- 46.4 Proposals and information exchanged during the informal proceedings described in this clause between the parties shall be privileged, confidential and without prejudice to a party's legal position in any formal proceedings.

All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.

- 46.5 In the event that the parties fail to agree the resolution of the dispute at the end of the mediation, either party may then invoke legal proceedings to seek determination of the dispute.
- 46.6 The parties agree that they shall not commence legal proceedings until the Dispute Resolution Procedure has been exhausted.
- 46.7 The Supplier shall continue to provide the Goods/Services in accordance with the terms of this Contract until a dispute has been resolved.
- 46.8 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.

47. Escalation Process

The following outlines the formal Escalation process that shall be followed in the event that a party to the Contract may experience a problem or problems that it is unable to resolve at local level.

In any event Parties to the Agreement agree to use all reasonable endeavours to resolve any such problems at local level before initiating the Escalation process.

Escalation Path relating to Product or Service Delivery Failure

Level	Customer	Supplier	Maximum Timescales
1	Authorised Representative of the Customer responsible for ordering	Local Account Manager	1 day from notification
2	Authorised Representative of the Customer	Regional Account Manager or Sales Director	5 days from notification to enact.
3	Authorised Representative of Customer	Company Director	15 Working days from notification

48. Arbitration

Any dispute difference or question between the parties to this Contract with respect to any matter or thing arising out of or relating to this Contract which cannot be resolved by negotiation and except in so far as may be otherwise provided in this Contract shall be referred to arbitration under the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof by a single arbitrator to be appointed by agreement between the parties or in Default of Agreement by the President for the time being of the Chartered Institute of Arbitrators.

49 Jurisdiction

This Contract shall be governed and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales (but subject always to the Arbitration provisions in Clause 48).