

Terms & Conditions between the Customer and Supplier For the Managed Services framework Y16018

The attached documents detail the Conditions of Contract that, in conjunction with the terms of the requirement as laid out in the Agreement Schedules and any other documents deemed as necessary shall form the Agreement.

For the avoidance of doubt Individual Supply Contracts shall be subject to the Requirement, Term and Conditions of this Agreement and the Suppliers Individual Terms and Conditions.

For the avoidance of doubt the Terms of this Agreement will take precedence over the Supplier Terms and Conditions and may be evaluated by individual customers as part of the mini-tender process.

1. Definitions & Interpretation

The following expressions shall have the meanings ascribed to them in relation to the entire Agreement:

“Accessing Body” means any organisation as defined in “Section One – Scope and Context” of the Invitation to Tender who has been granted access to this Agreement/Contract for the purposes of procuring the Goods and/or Services for their own needs thus becoming an Authorised Participant.

“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 Authorised Participants and the Supplier(s).

“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 Accessing Body.

“Commercial Services” is a trading style of Commercial Services Kent Ltd a wholly owned business of Kent County Council.

“Contract” a Mini Tender/Competition that results in an Order between the Customer and Supplier that is in accordance with the terms and conditions of this Framework.

“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 or authorised accessing bodies who access and use this Agreement and who shall take full responsibility for their own Individual Contracting processes.

“Documentation” means any document issued by either party that is pertinent to the Agreement and/or individual Order/ Contract.

“Exclusive Asset” means those Supplier Assets used by the Supplier which are used exclusively in the provision of the Goods and/or Services.

“Framework” means the Agreement.

“Goods” means the Goods and/or Services to be provided by the Supplier in accordance with the terms of the Agreement and/or individual Order/Contract. Includes all hardware & software.

“Individual Contract” means any Order/Contract for Goods and/or Services that are made between an Authorised Participant/Customer and Supplier under this Agreement and that shall abide by the terms, condition and requirement of both the Agreement and individual Orders/Contracts as specified from time to time.

“KCS” means the business unit of Commercial Services that takes ownership of and the responsibility for the management of the Framework Agreement

“Member Authority” means the Authority with responsibility for managing the Individual Contracts under the Agreement in their particular area.

“Mini Tender/Competition” means the process by which Authorised Participants and/or Customers may obtain the Goods and/or Services through inviting competition among all capable Suppliers in Order to procure best value for itself or the Authorised Participant/Customer for a stated period of time.

“Non-Exclusive Assets” means those Supplier Assets (if any) which are used by the Supplier in connection with the Goods and/or Services but which are also used by the Supplier for other purposes.

“Order” means any Order/Contract for Goods and/or Services that are made between the Authorised Participant and Supplier under this Agreement and that shall abide by the terms, condition and requirement of both the Agreement and individual Orders/Contracts as specified from time to time.

“Participating Authority” means any public body authorised to use the Agreement who shall have legal responsibility for managing their own Individual Contracts let under the Agreement.

“Subcontractor/Partnership” 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 and/or Services which form part of the contract.

“Lead Partner” means the Supplier who takes responsibility for all of the contractual obligations of any individual order or contract and who accepts full liability on behalf of the parties.

“Services” means the Goods and/or Services to be provided by the Supplier in accordance with the terms of the Agreement and/or individual Order/Contract. Includes all hardware and software.

“Supplier” means the Supplier appointed as part of the tender process to the Agreement whom has agreed to supply the Goods and/or Services under the terms, conditions and requirement of the Agreement and individual Orders/Contracts.

“Termination Assistance” means the activities to be performed by the Supplier pursuant to the Exit Plan.

“Transferable Assets” means those of the Exclusive Assets which are capable of legal transfer to the Customer.

“Transferable Contracts” means the Sub Contracts, licences for Supplier Software, licences for third party software or other Agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Goods and/or Services.

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 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. Conditions Applicable

- 2.1 These Conditions (together with the Requirements as set out in the Agreement) and in conjunction with the Suppliers conditions relating to the supply of individual contracts shall apply to the purchase of the Goods/Services by the Customer from the Supplier to the exclusion of all other terms and conditions including any which the Supplier may purport to apply under any sales offer or similar document.
- 2.2 The order of precedence pertaining to the appropriate terms and conditions for the Framework Agreement and Individual Contracts shall be;
- a) Framework Agreement Requirements
 - b) Framework Agreement Terms and Conditions
 - c) Supplier Terms and Conditions

3. The Price

The Price shall be the Price agreed as the result of a mini tender or agreed between the parties at time of order.

4. Payment-

- 4.1 The Contracting Authority shall not be held responsible for payments due from individual Participating Authorities, Agreement users or Customers.

5. Monetary Union

- 5.1 This Agreement adopts the monetary unit of the United Kingdom and should the United Kingdom enter into the European Monetary Union during the duration of this Agreement, any additional costs, duties and responsibilities falling directly on the Supplier will be borne by the Supplier.

6. Warranties

- 6.1 The Supplier hereby represents and warrants to the Customer that:
- 6.1.1 the Supplier sells the Goods/Services with full title guarantee and free from all encumbrances;
 - 6.1.2 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 Contract;
 - 6.1.3 the Goods/Services when delivered to the Customer will:
 - (a) be of a satisfactory quality and free from any defects in material or workmanship;
 - (b) comply with the appropriate United Kingdom EU or International standards and with all applicable statutory requirements and regulations;

- 6.1.4 the Goods/Services will be fit and sufficient for the purpose intended by the Customer as specified in the Contract and will comply with all applicable laws and regulations in force in England and Wales;
- 6.1.5 the Goods/Services do not and will not infringe any intellectual property right of any third party.
- 6.2 Each of the representations and warranties contained in clause 6.1 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 Contract.
- 6.3 The Supplier acknowledges that the Customer has entered into this Contract in reliance on the Warranties.
- 6.4 The Warranties shall continue in full force and effect notwithstanding delivery or payment for the Goods/Services and notwithstanding termination of this Contract for any reason.

7. Indemnities (FOR RICOH ONLY)

- 7.1 The Supplier shall indemnify and keep indemnified in full the Customer against all demonstrable direct indirect or consequential liability loss damages injury 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:
 - 7.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in clause 6;
 - 7.1.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods/Services including software;
 - 7.1.3 any claim made against the Customer in respect of any liability loss damage injury cost or expense sustained by the Customer's employees sub-contractors or agents or by any third party to the extent that such liability loss damage injury cost or expense is caused by or relates to or arises from the Goods/Services;
 - 7.1.4 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;
 - 7.1.5 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.

Indemnities (FOR CAPITA and KONICA MINOLTA ONLY)

- 7.2 Notwithstanding Clause 2.2 of this schedule, the Supplier shall have the right to agree appropriate indemnities, limitations of liability and the scope of losses covered by these in each Individual Supply Contract. Unless otherwise agreed in the Individual Supply Contract, the Supplier shall indemnify and keep indemnified in full the Customer against all demonstrable direct, indirect or consequential liability loss damages injury 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:

- 7.2.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in clause 6;
 - 7.2.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods/Services including software;
 - 7.2.3 any claim made against the Customer in respect of any liability loss damage injury cost or expense sustained by the Customer's employees sub-contractors or agents or by any third party to the extent that such liability loss damage injury cost or expense is caused by or relates to or arises from the Goods/Services;
 - 7.2.4 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;
 - 7.2.5 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.
- 7.3 If the United Kingdom Inland Revenue or any other taxing authority in any jurisdiction brings into charge to taxation any sums payable under the indemnity contained in this clause 8 then (to the extent that the loss damage cost liability charge or expense in respect of which the sum is payable is not allowable as a deduction for tax purposes against the sum so payable and in the same accounting period as that in which sum is brought into charge to tax) the sum so payable shall be grossed up by such amount as will ensure that after deduction of the taxation so chargeable there shall remain a sum equal to the amount that would otherwise be payable under such indemnity.

8 Insurance

Customers may amend these levels accordingly to meet their requirements as part of any further mini Competition.

- 8.1.1 The Supplier shall maintain, and require that any permitted sub-contractors maintain, throughout the Period of Agreement and individual Contracts the following levels of insurance:
- 8.1.2 Product Liability Insurance – £10 million (ten million pounds sterling) per claim or series of related claims
- 8.1.3 Public Liability Insurance – £10 million (ten million pounds sterling) per claim or series of related claims
- 8.1.4 Employer's Liability Insurance – £10 million (ten million pounds sterling) per claim or series of related claims.
- 8.1.5 Professional Indemnity Insurance - £5 million (five million pounds sterling) per claim or series of related claims.

8.2 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to above; the Customer may remove the Supplier from the Contract.

9 Set-Off and Counterclaim-

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

10 Notices

10.1 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 Contract or by facsimile transmission 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 facsimile transmission or by electronic mail to the correct facsimile number or electronic mail address of the addressee (within the case of a facsimile transmission a correct answerback).

11 Severance

11.1 Any provision of this Contract which is or may be void or unenforceable shall, to the extent of such invalidity or enforceability be deemed severable and shall not affect any other provision of this Contract which shall remain in force to the fullest extent possible.

12 Waiver

12.1 No waiver or forbearance by the Customer (whether express or implied) in enforcing any of its rights under this Contract shall prejudice its rights to do so in the future.

13 Assignment

13.1 The Supplier shall not assign, novate or otherwise dispose of any part of its rights and obligations under this Contract without the explicit written authority of the Customer which will not be unreasonably withheld. Customer may assign, novate or otherwise dispose of any part of its rights and obligations under this Contract by the giving of reasonable notice in writing to the Supplier.

14 Force Majeure

14.1 Neither party 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 Contract cannot be executed for a continuous period of six (6) months the Contract shall be automatically terminated with no liability on either party.

15 Termination

15.1 The Customer may terminate this Contract with justifiable cause giving the Supplier (sixty) 60 days' written notice.

- 15.2 The Customer shall be entitled to immediately 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.
- 15.3 The Customer may terminate this Contract at any time before all of the Goods/Services are delivered by giving written notice. On giving such written notice:
- 15.3.1 the Supplier shall cease to be bound to deliver and the Contracting Authority shall cease to be bound to receive delivery of any further Goods/Services;
 - 15.3.2 the Customer shall cease to be bound to pay that part of the Price which relates to those Goods which have not been delivered;
 - 15.3.3 the Customer shall not be liable for any loss or damage whatsoever arising from such termination.
- 15.4 The Customer may terminate this Agreement at any time in the event of the Supplier (in the case of an individual) becoming bankrupt or making a composition or arrangement with his creditors or (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 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.
- 15.5 Where a Contract Period is specified in the Contract then this Contract shall come to an end at the end of such Contract Period (if it has not already come to an end or been terminated before that date).
- 15.6 All termination or coming to an end of this Agreement shall not affect Individual Supply Contracts already in place. Individual Supply Contracts shall continue to their conclusion under the terms and conditions stated in the Contract unless terminated in accordance with the terms and conditions of said contracts as will be determined by the Customer.
- 15.7 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 Agreement for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

16 Bribery, Corruption and Collusion

- 16.1 The Customer will be entitled immediately to terminate this Agreement and to recover from the Supplier the amount of any loss resulting from such termination if:
- 16.2 The Supplier shall have offered to give or agreed to give to any person any gift or consideration of 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.

- 16.3 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).
- 16.4 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 Bribery Act 2010 or have given any fee or reward the receipt of which is an offence under the Local Government Act 1972 Section 117.
- 16.5 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:
- 16.5.1 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).
 - 16.5.2 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;
 - 16.5.3 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.
- 16.6 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 and in making alternative arrangements for the supply of the Goods/Services.

17 Intellectual Property Rights

- 17.1 All Intellectual Property created or developed either by the Customer or the Supplier that relates directly to the Goods or Services to be supplied under this Contract will remain the property of the Customer.
- 17.2 The Supplier will defend, at its own expense, any legal action brought against the Customer to the extent that it is based on a claim that the Goods when used in accordance with any documentation that accompanies the Goods, infringes a copyright of a third party, and the Supplier will pay any final judgment awarded to the third party against the Customer PROVIDED THAT: the Customer shall:
- (i) notify the Supplier promptly in writing of any such claim
 - (ii) permit the Supplier to have sole control of the defence, compromise or settlement of such claim, including any appeals

- (iii) not make any prejudicial statements or settlement offers without the prior written consent of the Supplier, and
 - (iv) fully co-operate with the Supplier in the defence or settlement of such claim.
- 17.3 The Supplier will pay such reasonable costs, damages or fees incurred by the Customer in connection with such action or claim.
- 17.4 Should the goods/services become, or in the Supplier's or Customer's reasonable opinion be likely to become, the subject of any such infringement claim, the Customer shall permit the Supplier, at the Supplier's option and expense, to:
- (i) procure for the Customer the right to continue using the Goods/services, or
 - (ii) replace or modify the Goods/Services so that they become non-infringing.
- 17.5 Should the Supplier require to use any intellectual property (i.e. logos), the Supplier must first obtain the express consent of the Customer. Failure to obtain such consent may result in a claim for infringement and/or immediate termination of this Agreement.

18 Confidentiality

- 18.1 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.
- 18.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Contract:-
- 18.2.1 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;
 - 18.2.2 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.
- 18.3 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.
- 18.4 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Contract.
- 18.5 The provisions of Clauses 18.1 to 18.4 shall not apply to any Confidential Information received by one Party from the other:-

- 18.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
- 18.5.2 which was in the possession of the other Party previous to entering into the Contract
- 18.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 18.5.4 is independently developed without access to the Confidential Information; or
- 18.5.5 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.
- 18.6. Nothing in this Condition shall prevent the Customer:-
- 18.6.1 disclosing any Confidential Information for the purpose of:-
- (i) the examination and certification of the Customer's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources; or
- 18.6.2 disclosing any Confidential Information obtained from the Supplier:-
- (i) to any other department, office or agency of the Crown; or
 - (ii) to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Contract;
- 18.6.3 provided that in disclosing information under sub-paragraph 18.6.2 (i) or (ii) 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.
- 18.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract 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.
- 18.8 In the event that the Supplier fails to comply with this Condition 18 the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 18.9 The Supplier and the Customer hereby undertakes to the other that during the currency of this Agreement 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.

18.10 For the purposes of the Customer's undertaking under this clause 18 the information shall be deemed to include all information (written or oral) concerning the Contract requirement. The provisions under this clause 18 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

19 Freedom of Information

19.1 The Supplier acknowledges that the Customer is subject to the requirements of the Code of Practice on Access to Government Information, 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.

19.2 The Supplier shall and shall ensure that its sub-contractors shall

19.1.1 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;

19.1.2 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 Supplier requesting that information; and

19.1.3 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.

20.1 The Customer shall be responsible for determining at its absolute discretion whether:-

20.1.2 the information is exempt from disclosure under the Code of Practice on Access to Government Information the FOIA and the Environmental Information Regulations;

20.1.3 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.

20.2 The Customer shall be responsible for determining at its absolute discretion whether:-

20.2.1 the information is exempt from disclosure under the Code of Practice on Access to Government Information the FOIA and the Environmental Information Regulations;

- 20.2.2 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.
- 20.3 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:-
- 20.3.1 without consulting with the Supplier, or
- 20.3.2 following consultation with the Supplier and having taken its views into account.
- 20.4 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 20.2.

21. **Data Protection**

- 21.1 The Supplier's attention is hereby drawn to the Data Protection Act 1998 and to Directive 95/46/EC and any regulations implementing it (all referred to together as the Data Protection Requirements").
- 21.2 The Supplier warrants that it will duly observe all its obligations under the Data Protection Requirements which arise in connection with the Contract and any information it may receive or acquire in connection with the Contract including without limitation staff responses to the questionnaires usage of the web-site and information on any database and ensure that the Customer shall not be in breach of the Data Protection Requirements as a result of any act or omission of the Supplier.
- 21.3 In particular without limitation the Supplier shall:
- act only on instructions of the Customer as data controller and take appropriate technical and organisational measures against accidental loss or destruction of and damage to any personal data
- not transfer any personal data outside the countries of the European Economic Area without and only to the extent of any written consent of the relevant data subject and the Customer which may be refused at the Customer's sole discretion, and
- as required by Schedule 1 Part II of the Data Protection Act 1998 the Supplier shall:
- only carry out processing (as defined in the Data Protection Act 1998) on the Customer's instructions, and
- comply with the obligations set out in the seventh principle of Schedule 1 of the Data Protection Act 1998 in respect of all processing carried out on behalf of the Customer.

21.4 Without prejudice to Clause 21.2, if requested, the Supplier is to provide a report within forty-eight (48) hours of contract signature as to how it shall meet the Data Protection Requirements of the Customer and those that are incumbent on the Supplier and at any time shall allow the Customer to audit the Supplier's compliance with its obligations in respect of the Data Protection Requirements to include allowing access to all information and provision of assistance to employees of the Customer's internal and external audit for the purposes of such audit.

22. Rights of Third Parties

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

23. Publicity

23.1 The Supplier shall not, without prior written permission of the Customer advertise or publicly announce that the Supplier is undertaking work for the Customer.

24. Headings

24.1 Headings to clauses in this Contract are for the purpose of information and identification only and shall not be construed as forming part of this Contract.

25. Entire Contract

25.1 This Contract (as amended from time to time), together with any document expressly referred to in any of its terms, contains the entire agreement 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.

25.2 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 25.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of this Contract.

26. Diversity

26.1 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 or perform the Services in accordance with their responsibilities under 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 Agreement and provide the Goods or Services in a manner consistent with the Customer's Equality and Diversity Policy Statement.

27. Jurisdiction

27.1 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 28 below).

28. Dispute Resolution Procedure

28.1 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.

28.2 If the parties have failed to resolve a dispute by following the Escalation Procedure, then the Customer's authorised representative and the Supplier's 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's authorised representative and the Supplier's 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.

28.3 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.

28.4 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.

28.5 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.

28.6 The parties agree that they shall not commence legal proceedings until the Dispute Resolution Procedure has been exhausted.

28.7 The Supplier shall continue to provide the Product and/or Services in accordance with the terms of this Contract until a dispute has been resolved.

28.8 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.