

**CONDITIONS OF CONTRACT  
FOR THE PROVISION OF GOODS AND SERVICES**  
**Y16019- Interactive Audio Visual & IT Hardware Solutions and Consultancy**

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## 1. Definitions & Interpretation

- 1.1 In these conditions the following expressions shall have the meanings set out below:
- 1.1.1 “Agreement” means the Contract for the supply and delivery of the goods and or services as stated in the Requirement.
  - 1.1.2 “Authorised Participant” means the organisation who takes delivery of the goods/services. This may also be a direct customer or a customer of an authorised Accessing Body.
  - 1.1.3 “Commencement Date” means the date on which this Agreement shall commence.
  - 1.1.4 “Conditions” means the terms and conditions of purchase set out in this document.
  - 1.1.5 “Confidential Information” means all information, whether provided in writing or orally, and disclosed by the Contracting Authority to the Supplier, or to any employee or sub-contractor of the Supplier whether before or after the date of the Contract, including, without limitation, any information relating to Customers products, operations, processes, plans or intentions, product information, know how, design rights, trade secrets, market opportunity and business affairs.
  - 1.1.6 “Contract” means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods made between a Authorised Participant and the Supplier.
  - 1.1.7 “Contract Period” means the period during which this Contract is in force.
  - 1.1.8 “Contract Standard” means such standard as complies in each and every respect with all relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract the standard which is to the reasonable satisfaction of the Contracting Authority’s Contract Officer.
  - 1.1.9 “Contracting Authority” means the public sector Authority that has agreed to take responsibility for the tender process and contract formation relating to the supply and delivery of Interactive Audio Visual & IT Hardware Solutions & Consultancy.
  - 1.1.10 “Environmental Information Regulations” means the Environmental Information Regulations 2004.
  - 1.1.11 “FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time

together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

- 1.1.12 "Goods" means any products and or services as stated in the Requirement.
- 1.1.13 "Price" means the price for the Goods as set out in the Agreement which sum shall include carriage, packing, insurance and delivery charges and shall be considered to exclude VAT unless otherwise stated
- 1.1.14 "Contracting Authority Contract Officer" means the person authorised to act as the representative for the purpose of the Contract.
- 1.1.15 "Review Date" means the date for review of the Contract stated in the Contract.
- 1.1.16 "Supplier" means the organisation appointed to this Contract to supply the goods and services.
- 1.1.17 "VAT" means Value Added Tax and any tax of a similar nature substituted for it or in addition to it.

- 1.2 Anything defined or referred to in the Contract shall have the same meaning in these Conditions.
- 1.3 Reference in these Conditions to any clause, sub-clause, schedule or paragraph without further designation shall be a reference to that clause sub-clause schedule or paragraph in these Conditions.
- 1.4 Reference to any statute or order shall include any extension modification or re-enactment thereof and any order regulation or bye-law made thereunder.
- 1.5 The singular number shall include the plural number and vice versa and reference to any particular gender shall include all genders.
- 1.6 The headings in these Conditions are for convenience only and shall not be taken into consideration in the interpretation or construction.

## **2. Conditions Applicable**

- 2.1 These Conditions shall apply to the purchase of the Goods or Services by the Authorised Participant 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.

## **3. The Price and Price Variation**

- 3.1 The Price shall be the Price mentioned in the Agreement.

- 3.2 The following price variation procedure shall have effect:
- 3.2.1 If the Supplier wishes to vary the Price of the Goods or Services with effect from any Review Date the Supplier must give to the Contracting Authority not more than 4 nor less than 2 months prior to that Review Date written notice (“the Supplier’s Notice”) stating the price variation requested and giving a detailed justification for such request (including copies of any documents referred to).
  - 3.2.2 Following service of any Supplier’s Notice the Contracting Authority shall be entitled to request from the Supplier further and better particulars of the reasons for the proposed price variation and of the information included in the Supplier’s Notice and the Supplier shall provide any information reasonably so requested.
  - 3.2.3 Within four (4) weeks of the date of service of the Supplier’s Notice (or of receipt by the Contracting Authority of further information requested whichever is the later) the Contracting Authority shall give to the Supplier written notice (“the Contracting Authority Notice”) stating one of the following options:-
    - 3.2.3.1 the Contracting Authority accepts the Supplier’s suggested price variation; or
    - 3.2.3.2 the Contracting Authority does not accept any price variation; or
    - 3.2.3.3 the Contracting Authority suggest a price variation which is different to the variation suggested by the Supplier.
  - 3.2.4 If the Contracting Authority accepts the Supplier’s suggested price variation then that shall take effect from the relevant Review Date.
  - 3.2.5 If the Contracting Authority does not accept the Supplier’s suggested price variation and does not suggest a price variation which is different to the variation suggested by the Supplier (or if the Contracting Authority fails to serve any notice under clause 3.2.3.3 in which case the Supplier’s suggested price variation shall not take effect) either party shall be entitled to terminate this Contract by notice given to the other party before the expiry of one (1) calendar month following the relevant Review Date.
  - 3.2.6 Within four (4) weeks of the date of service of the Contracting Authority’s Notice suggesting a price variation which is different to the Supplier’s suggested price variation the Supplier shall give to the Contracting Authority written notice stating either:
    - 3.2.6.1 the Supplier accepts the Contracting Authority’s suggested price variation, or
    - 3.2.6.2 the Supplier does not accept the Contracting Authority’s suggested price variation.

3.2.7 If the Supplier accepts the Contracting Authority's suggested price variation then that shall take effect from the relevant Review Date.

3.2.8 If the Supplier does not accept the Contracting Authority's suggested price variation (or if the Supplier fails to serve any notice under clause 3.2.6 in which case the Contracting Authority's suggested price variation shall be deemed to have been rejected by the Supplier) then the Contracting Authority's suggested price variation shall not take effect (for the avoidance of doubt nor shall the Supplier's suggested price variation take effect) and either party shall be entitled to terminate this Agreement by notice given to the other party before the expiry of one calendar month following the relevant Review Date.

#### **4 Payment**

4.1 The Authorised Participant shall only make payment after delivery of all the Goods and or Services specified 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 Authorised Participant of a detailed invoice showing correct invoice value (and where VAT is payable, a VAT invoice) clearly stating the Contract Number.

4.2 Where the provisions of clause 4.1 have been complied with, payments due shall be made by the Authorised Participant within 30 days of the tax point of the invoice(s). The Authorised Participant reserves the right to withhold payment where the provisions of clause 4.1 have not been complied with.

#### **5 Monetary Union**

5.1 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 Delivery, Risk and Title**

6.1 The Supplier shall deliver the Goods, appropriately protected and packaged, to the specified premises and at the times specified or stated.

6.2 The Goods shall be delivered in the manner and quantity required by the Authorised Participant (which may be by instalments).

6.3 The Supplier shall be responsible for arranging carriage of the Goods at the entire cost and risk of the Supplier.

6.4 The Goods shall be deemed not to have been delivered unless and until:

(a) all of the Goods have been unloaded at the specified premises and on the days and times, and

- (b) the appropriate Contract Officer has signed a delivery note (containing the details specified in the Contract) acknowledging delivery (and if required by the Contract installation) of the Goods; (and for the avoidance of doubt where the Goods are to be delivered by instalments the relevant delivery note for deemed delivery shall be the one signed on delivery of the final instalment).
- 6.5 A signature on a delivery note or other documentation in connection with delivery of the Goods is evidence only of the number of packages received (and for the avoidance of doubt not evidence that the correct quantity of the actual Goods has been received or that the Goods are of appropriate quality or fit for purpose) and signature of such note or of any other acknowledgement will be deemed in all circumstances to be without prejudice to the Authorised Participant's rights including without limitation the right to reject the Goods and/or sue for damages for breach of this Contract by the Supplier.
- 6.6 Risk in the Goods shall not pass to the Authorised Participant unless and until a delivery note has been signed by an authorised officer of the Authorised Participant. If the Goods are rejected by the Authorised Participant for any reason at any time after delivery has been affected then risk in the Goods shall revert to the Supplier immediately upon the Authorised Participant notifying the Supplier of such rejection of the Goods.
- 6.7 Title to the Goods shall pass to the Authorised Participant upon payment of the relevant invoice(s) in accordance with clause 4.2.
- 6.8 The Supplier shall notify the Authorised Participant immediately on becoming aware that it may be unable to deliver or install the Goods to or at the premises specified in the Contract and/or on the day(s) and/or at the times specified in the Contract or in accordance with any instructions specified.
- 6.9 In the event of any failure on the part of the Supplier to deliver the Goods in accordance with the Contract the Contracting Authority may (without prejudice to its other rights under this Contract):
  - (a) terminate the Contract as set out in Clause 16.4; or
  - (b) specify by written notice to the Supplier such revised delivery date(s)/days and/or times as it sees fit, or
  - (c) order from alternative supplier. Any additional costs will be passed to the contracted supplier.
- 6.10 In the case that any of the Goods delivered by the Supplier are not in accordance with the terms of the Contract the Authorised Participant shall have the right to reject such Goods within a reasonable time and to purchase goods elsewhere as near as practicable to the same specification and conditions as circumstances shall permit without prejudice to any other right which the Authorised Participant may have against the Supplier; and the

making of payment shall not prejudice the Contracting Authorities' right of rejection.

- 6.11 The Authorised Participant 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 the Authorised Participant be entitled to arrange for the removal of those Goods and to charge the cost of the removal to the Supplier.
- 6.12 In the event that the Authorised Participant rejects any Goods it may (at its absolute discretion):
- (a) terminate the Contract or any part thereof without prejudice to its existing rights and remedies; and/or
  - (b) 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 Goods from elsewhere.
- 6.13 The Contracting Authority shall be entitled to take samples of the Goods at random for examination during the Contract Period and if the sample does not conform with the Contract Standard the whole consignment of the Goods may be rejected and any additional costs incurred by the Contracting Authority charged to and recovered from the Supplier.

## 7 Warranties

- 7.1 The Supplier hereby represents and warrants to the Contracting Authority that:
- 7.1.1 the Supplier sells the Goods and provides the Services with full title guarantee and free from all encumbrances;
  - 7.1.2 on delivery to the Authorised Participant, the Goods and or services will be in strict accordance with the specification for the Goods or Services set out or referred to in this Agreement/Contract;
  - 7.1.3 the Goods and services when delivered to the Contracting Authority 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;
  - 7.1.4 the Goods and Services will be fit and sufficient for the purpose intended as specified and will comply with all applicable laws and regulations in force in England and Wales;



- 7.1.5 the Goods or Services do not and will not infringe any intellectual property right of any third party.
- 7.2 Each of the representations and warranties contained in clause 7.1 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.
- 7.3 The Supplier acknowledges that the Contracting Authority has entered into this Contract in reliance on the Warranties.
- 7.4 The Warranties shall continue in full force and effect notwithstanding delivery or payment for the Goods or Services and notwithstanding termination of this Contract for any reason.

## **8 Indemnities**

- 8.1 The Supplier shall indemnify and keep indemnified in full the Contracting Authority against all direct liability loss damages injury costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Contracting Authority as a result of or in connection with:
  - 8.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in clause 7;
  - 8.1.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods;
  - 8.1.3 any claim made against the Contracting Authority in respect of any liability loss damage injury cost or expense sustained by the Contracting Authority 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;
  - 8.1.4 any negligent act or omission of the Supplier or its employees agents or sub-contractors in supplying and delivering the Goods and Services which causes financial loss to the Contracting Authority;
  - 8.1.5 any liability which the Contracting Authority incurs under the Consumer Protection Act 1987 as a result of the acts or omissions of the Supplier in providing the Goods.
- 8.2 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.

## **9 Insurance**

9.1 The Supplier shall maintain, and require that any permitted sub-contractors maintain, throughout the Period of Contract the following levels of insurance:

9.1.1 Product Liability Insurance – minimum £15 million (fifteen million pounds sterling) per claim or series of related claims

9.1.2 Public Liability Insurance – minimum £5 million (five million pounds sterling) per claim or series of related claims

9.1.3 Employer's Liability Insurance – minimum £10 million (ten million pounds sterling) per claim or series of related claims.

9.2 The provisions of Clause 8.1 shall not be taken as limiting the right of Contracting Authority to claim from the Supplier for:

9.2.1 expenditure or charges rendered unnecessary as a result of any default by the Contractor its employees or agents.

9.3 The insurance policies shall include an Indemnity to Principal's clause such that the Contracting Authority as appropriate will be covered by such policies in respect of all claims arising from the activities of the Supplier in connection with the Contract which are risks covered by such policies.

9.3 The Supplier shall not cause or permit any breach of such insurance policy.

9.4 The Supplier shall immediately notify the Contracting Authority and the Supplier's insurers of any happening or event which may give rise to any claim, demand, proceedings, damage, cost or charge whatsoever arising out of the Contract, and the Supplier shall indemnify the Contracting Authority against any loss whatsoever which may be occasioned to the Contracting Authority by the Supplier's failure to give such notification.

9.5 Where the Contracting Authority agrees the employment by the Supplier of a sub-contractor then the clauses above, relating to insurance, must form part of the Contract between the Supplier and sub-contractor.

9.6 Nothing in this Clause 9 shall be construed as limiting either party's liability for personal injury or death caused by the negligence of that party.

## **10 Set-Off and Counterclaim**

10.1 The Contracting Authority 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 Contracting Authority may at any time be entitled.

## **11 Notices**

11.1 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 the Agreement 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).

## **12 Severance**

12.1 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.

## **13 Waiver**

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

## **14 Assignment**

14.1 The Supplier shall not assign or otherwise dispose of any part of its rights and obligations under this Contract without the explicit written authority of the Contracting Authority which will not be unreasonably withheld. The Contracting Authority may assign or otherwise dispose of any part of its rights and obligations under this Contract as it deems fit.

## **15 Force Majeure**

15.1 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.

## **16 Termination**

16.1.1 The Contracting Authority may terminate this Agreement without cause on giving the Supplier 90 (ninety) days' written notice.

16.2 The Contracting Authority 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.

16.3 The Contracting Authority may terminate this Agreement at any time before all of the Goods or Services are delivered by giving written notice. On giving such written notice:

16.3.1 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 and or Services;

16.3.2 the Contracting Authority shall cease to be bound to pay that part of the Price which relates to those Goods or Services which have not been delivered;

16.3.3 the Contracting Authority shall not be liable for any loss or damage whatsoever arising from such termination.

16.4 The Contracting Authority 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.

16.5 Where a Contract Period is specified 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).

16.6 All termination or coming to an end of this Contract shall be without prejudice to any claims for prior breach of this Agreement or individual 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.

16.7 The Contracting Authority may terminate the Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Goods and or Services under this Agreement.

## 17. **Change Control**

17.1 Changes to the Agreement or the service specification shall be undertaken under the following general clauses:

17.1.1 Both parties shall conduct discussions relating to proposed changes to the Agreement in good faith. Neither the Contracting Authority nor the Supplier shall unreasonably withhold its agreement to any change.

- 17.1.2 Until such time as a Contract Change Note (CCN)<sup>1</sup> has been signed by both parties, the Supplier shall, unless otherwise expressly agreed in writing continue to supply the Services.
- 17.1.3 Any work undertaken in connection with any proposed change to the agreement by the Supplier, its sub-contractors or agents shall be undertaken entirely at the expense and liability of the Supplier.
- 17.1.4 Any discussions, negotiations or other communications which may take place between the Contracting Authority and the Supplier in connection with any proposed change to the Agreement, including but not limited to the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.

## 17.2 Procedure

- 17.2.1 Should either party wish to amend the Agreement pursuant to the provisions of this Schedule, that party shall submit a brief written paper (the “proposed change paper”) to the other party addressing, as a minimum, the following points:
  - 17.2.1.1 the title of the proposed change;
  - 17.2.1.2 the originator and date of the proposal for the proposed change;
  - 17.2.1.3 the reason for the proposed change;
  - 17.2.1.4 full details of the proposed change;
  - 17.2.1.5 the price, if any, of the proposed change;
  - 17.2.1.6 details of the likely impact, if any, of the proposed change on other aspects of the agreement.
- 17.2.2 Within two weeks of the submission of a proposed change paper (or such other period as may be agreed between the parties) the receiving party shall respond to the proposed change paper in writing and, if appropriate, the Contracting Authority’s contract manager and the Supplier’s contract manager (and/or other representatives of either party) shall meet to discuss the proposed change paper.
- 17.2.3 Discussion between the parties following the submission of a proposed change paper shall result in either:
  - 17.2.3.1 agreement between the parties on the changes to be made to the Agreement (including agreement on the date upon which the changes are to take effect (the “effective date”), such agreement to be expressed in the form of proposed revisions to the text (and/or diagrams, designs etc. as necessary) of the relevant parts of the Contract; or
  - 17.2.3.2 no further action being taken on that proposed change paper.

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<sup>1</sup> A Pro-Forma CCN is included as Appendix 1 to these terms.

- 17.2.4 A copy of any proposed revisions to the agreement agreed between the parties in accordance with paragraph 17.2.3.1 above, accompanied by a completed pro forma (as reproduced at Appendix 1), shall constitute a CCN. A unique sequential number shall identify each CCN.
- 17.2.5 Two copies of each CCN shall be signed by the Supplier and submitted to the Contracting Authority not less than ten working days (or such other period as may be agreed between the parties) prior to the effective date agreed in accordance with paragraph 17.2.2.1 above.
- 17.2.6 Subject to the agreement reached in accordance with paragraph 17.2.2.1 above remaining valid, the Contracting Authority shall sign both copies of the CCN within five working days (or such other period as may be agreed between the parties) of receipt by the Contracting Authority. Following signature by the Contracting Authority the Contracting Authority shall return one copy of the signed CCN to the Supplier.
- 17.2.7 A CCN signed by both parties shall constitute an amendment to the Agreement.
- 17.3 The Contracting Authority shall be entitled at any time prior to the completion of the Agreement to request that the Supplier modify any aspect of the scope of the Agreement.
- 17.4 The Contracting Authority shall provide the Supplier with full particulars of any requested modification and such further information as the Supplier may reasonably require. Within (fourteen) 14 days of receipt of such request the Supplier shall inform the Contracting Authority in writing of the alterations that may need agreement for completion of the Agreement and any additional prices payable to implement such modification. For the avoidance of doubt, the Price originally payable for the Agreement may also be reduced because of a request for modification.
- 17.5 If the Contracting Authority elects to proceed with such modification then the timeframe and prices payable shall be amended as agreed with the Supplier pursuant to Clause 17.2 above and accepted by the Contracting Authority in writing.

## **18 Bribery, Corruption and Collusion**

- 18.1 The Contracting Authority shall be entitled immediately to terminate this Agreement and to recover from the Supplier the amount of any loss resulting from such termination if:
- 18.1.1 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 Contracting Authority or for

showing or forbearing to show favour or disfavour to any person in relation to this Contract.

18.1.2 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).

18.1.3 In relation to any contract with the Contracting Authority 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.

18.1.4 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:

18.1.4.1 communicated to a person other than the Contracting Authority 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)

18.1.4.2 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;

18.1.4.3 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.

18.2 For the purpose of this clause the expression "loss" shall include the reasonable cost to the Contracting Authority of the time spent by its officers in terminating the Agreement/Contract and in making alternative arrangements for the supply of the Goods or Services.

## **19 Intellectual Property Rights**

19.1 All Intellectual Property created or developed either by the Contracting Authority the Supplier during the supply of the Goods will remain the property of the Contracting Authority.

19.2 The Supplier will defend, at its own expense, any legal action brought against the Contracting authority to the extent that it is based on a claim that the Goods and Services when used in accordance with any documentation that accompanies the Goods and or Services, infringes a copyright of a third

party, and the Supplier will pay any final judgement awarded to the third party against the Contracting Authority PROVIDED THAT: the Contracting Authority 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.

19.3 The Supplier will pay such reasonable costs, damages or fees incurred by the Contracting Authority in connection with such action or claim.

19.4 Should the Goods or Services become, or in the Supplier's or Contracting Authority's reasonable opinion be likely to become, the subject of any such infringement claim, the Contracting Authority shall permit the Supplier, at the Supplier's option and expense, to:

- (i) procure for the Contracting Authority the right to continue using the Goods, or
- (ii) replace or modify the Goods so that they become non-infringing.

19.5 Should the Supplier require to use any intellectual property (i.e. logos), the Supplier must first obtain the express consent of the Contracting Authority. Failure to obtain such consent may result in a claim for infringement and/or immediate termination of the Agreement/Contract.

## 20 Confidentiality

20.1 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 Agreement/Contract or except where disclosure is otherwise expressly permitted by the provisions of the Agreement/Contract.

20.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Contracting Authority under or in connection with the Agreement/Contract:-

20.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Agreement/Contract as is strictly necessary for the performance of the Agreement/Contract and only to the extent necessary for the performance of the Agreement/Contract;



- 20.2.2 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 Agreement/Contract.
- 20.3 Where it is considered necessary in the opinion of the Contracting Authority, the Supplier shall ensure that staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement/Contract.
- 20.4 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Agreement/Contract.
- 20.5 The provisions of Clauses 20.1 to 20.4 shall not apply to any Confidential Information received by one Party from the other:-
- 20.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
- 20.5.2 which was in the possession of the other Party previous to entering into the Agreement/Contract
- 20.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 20.5.4 is independently developed without access to the Confidential Information; or
- 20.5.5 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.
- 20.6 Nothing in this Condition shall prevent the Contracting Authority :-
- 20.6.1 disclosing any Confidential Information for the purpose of:-
- (i) the examination and certification of the Contracting Authority'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
- 20.6.2 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 Contracting Authority for any purpose relating to or ancillary to the Agreement/Contract;

20.6.3 provided that in disclosing information under sub-paragraph 20.6.2 (i) or (ii) the Contracting Authority 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.

20.7 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.

20.8 In the event that the Supplier fails to comply with this Condition 20, the Contracting Authority reserves the right to terminate the Agreement/Contract by notice in writing with immediate effect.

20.9 The Supplier hereby undertakes to the other that during the currency of the Agreement/Contract 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.

20.10 For the purposes of the Contracting Authority undertaking under this clause 20 the information shall be deemed to include all information (written or oral) concerning the contract requirement. The provisions under this clause 20 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

## 21. Freedom of Information

21.1 The Supplier acknowledges that the Contracting Authority 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 Contracting Authority (at the Supplier's expense) to enable the Contracting Authority to comply with these information disclosure requirements.

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

21.2.1 transfer the request for information to the Contracting Authority as soon as practicable after receipt and in any event within two working days of receiving a request for information;

21.2.2 provide the Contracting Authority with a copy of all information in its possession or power in the form that the Contracting Authority requires within five working days (or such other period

as the Contracting Authority may specify) of the Client requesting that information; and

- 21.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 21.3 The Contracting Authority shall be responsible for determining at its absolute discretion whether:-
  - 21.3.1 the information is exempt from disclosure under the Code of Practice on Access to Government Information the FOIA and the Environmental Information Regulations;
  - 21.3.2 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 Contracting Authority.
- 21.4 The Supplier acknowledges that the Contracting Authority 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:-
  - 21.4.1 without consulting with the Supplier, or
  - 21.4.2 following consultation with the Supplier and having taken its views into account.
- 21.5 The Supplier shall ensure that all information produced in the course of the Agreement/Contract or relating to the Agreement/Contract is retained for disclosure and shall permit the Contracting Authority 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 Contracting Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 21.4.

## **22. Data Protection**

- 22.1 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").
- 22.2 The Supplier warrants that it will duly observe all its obligations under the Data Protection Requirements which arise in connection with the Agreement/Contract and any information it may receive or acquire in connection with the Agreement/Contract including without limitation staff responses to the questionnaires usage of the web-site and information on

any database and ensure that the Contracting Authority shall not be in breach of the Data Protection Requirements as a result of any act or omission of the Supplier.

22.3 In particular without limitation the Supplier shall:

22.3.1 act only on instructions of the Contracting Authority as data controller and take appropriate technical and organisational measures against accidental loss or destruction of and damage to any personal data

22.3.2 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 Contracting Authority which may be refused at the Contracting Authority's sole discretion, and

22.4 as required by Schedule 1 Part II of the Data Protection Act 1998 the Supplier shall:

22.4.1 only carry out processing (as defined in the Data Protection Act 1998) on the Contracting Authority's instructions, and

22.4.2 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 Contracting Authority .

22.5 Without prejudice to Clause 22.2, 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 Contracting Authority and those that are incumbent on the Supplier and at any time shall allow the Contracting Authority 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 Contracting Authority's internal and external audit for the purposes of such audit.

## **23. Rights of Third Parties**

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

## **24. Publicity**

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

## **25. Headings**

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

## **26. Entire Contract**

26.1 The Agreement/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 the Agreement/Contract.

26.2 The Supplier confirms that, in agreeing to enter into the Agreement/Contract, it has not relied on any representation save insofar as the same has expressly in the Agreement/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 the Agreement/Contract, save that the agreement of the Supplier contained in this Clause 26.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of the Agreement/Contract.

## **27. Diversity**

27.1 Throughout the duration of the Agreement/Contract the Supplier shall and in addition shall ensure that its sub-contractors shall discharge their obligations under the Agreement/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 Contract and provide the Goods or Services in a manner consistent with the Contracting Authority 's Equality and Diversity Policy Statement.

## **28. Conflict of Interest and Fraud**

28.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any personnel are placed in a position where (in the reasonable opinion of the Contracting authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or personnel and the duties owed to Contracting Authority under the provisions of this Agreement/Contract.

28.2 The Supplier shall promptly notify and provide full particulars to the Contracting Authority if such conflict as referred to above arises or is reasonably foreseeable to arise.

- 28.3 The Contracting Authority reserves the right to terminate this Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of Contracting Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Contracting Authority under the provisions of this Agreement/Contract. The action of the Contracting Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority.
- 28.4 The Supplier shall safeguard the Contracting Authority's funding of the Agreement/Contract against fraud generally and, in particular, fraud on the part of the Supplier or its personnel. The Supplier shall notify the Contracting Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **29 Provision of Services**

- 29.1 During the Agreement period and any individual Contract period the Supplier shall provide the Goods and Services and any modifications authorised under these Conditions or agreed between the parties in a proper, skillful and professional manner to the Contract Standard and to the entire satisfaction of the Contract Officer. The Supplier shall supply the Services to the Contracting Authority in a timely manner and in line with the required service level agreement and KPI's.
- 22.2 The Supplier shall provide all equipment transport and logistics to fulfill the contract requirement and shall undertake to provide and maintain at all times appropriate numbers of suitably qualified and experienced personnel and other facilities necessary for the performance of the Service and shall provide operating and support services necessary for carrying out the Service.
- 22.3 A signature on documentation in connection with provision of the Service is evidence only that the Supplier's personnel have been to the site (and for the avoidance of doubt not evidence that the Services have been carried out or that the Goods are now in working order and/or fit for purpose) and signature of such note or of any other acknowledgement will be deemed in all circumstances to be without prejudice to the Contracting Authority's rights including without limitation the right to reject the claim that the Services have not been properly carried out.
- 22.4 The Supplier shall notify the Contracting Authority immediately on becoming aware that it may be unable to provide the Services in accordance with this Contract.
- 22.5 In the event of any failure on the part of the Supplier to provide the Services in accordance with this Agreement and or individual Contract the Contracting Authority may without prejudice to its other rights under this Contract.

22.5.1 terminate the Contract as regards the remaining provision of Services

22.5.2 specify by written notice to the Supplier such date(s)/days and/or times for provision of the Services as it see fit.

22.6 In the case that any of the Services delivered by the Supplier are not in accordance with the terms of this Agreement the Contracting Authority shall have the right to reject such Services within a reasonable time and to purchase Services elsewhere, as near as practicable to the same specification and conditions as circumstances shall permit (without prejudice to any other right which the Contracting Authority may have against the Supplier and the making of payment shall not prejudice the Contracting Authority's right of rejection) and to recover as a debt due from the Supplier all extra costs and expenses arising from or in connection with the rejection of the Services including but not limited to the cost of purchasing alternative Services from elsewhere.

### **30. Dispute Resolution Procedure**

30.1 The parties shall attempt to resolve any disputes (other than those relating to the termination of this Agreement in whole or in part) arising under or in relation to this Agreement by initially following the Escalation Procedure, in the event the Escalation Procedure fails to achieve agreement or in exceptional circumstances the Contracting Authority reserves the right to refer the matter to the Dispute Resolution Procedure identified below.

30.2 If the parties have failed to resolve a dispute by following the Escalation Procedure, then the Contracting Bodies 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 Contracting Bodies Authorities 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.

30.3 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.

30.4 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.

- 30.5 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.
- 30.6 The parties agree that they shall not commence legal proceedings until the Dispute Resolution Procedure has been exhausted.
- 30.7 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Agreement/Contract until a dispute has been resolved.
- 30.8 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.

### **31. Jurisdiction**

- 31.1 This Agreement and all individual Contracts let under this Agreement 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.

### **32. Alternative Clauses**

#### **32.1 SCOTS LAW**

Jurisdiction (Clause 31)

The original Clause 31 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the Scottish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

#### **32.2 NORTHERN IRELAND LAW**

Jurisdiction (Clause 31)

The original Clause 31 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Northern Ireland and the Parties agree to submit to the exclusive jurisdiction of the Northern Irish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.