

Call off Conditions of Contract Y17038

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Call Off Conditions of Contract

These Conditions are representative of the Call Off conditions of Contract entered into between the Supplier(s) and the Customer and the ensuing Contract/Purchase Order entered into between the Supplier and the Customer.

1.1 Definitions and Interpretation:

Academy	Means a school in England which is directly funded by the Department for Education (DfE) and independent of local authority control.
Agreement	Means this framework arrangement that has been procured and awarded in line with the Public Contract Regulation 2015.
Alternative Supplier	Means an Alternative Supplier on the Agreement utilised due to failure in Contractual obligation.
Call Off Contract	The Call Off Contract is the Contract formed between the Customer and the approved Supplier to the framework entered into after the completion of a further competition.
Contract	Means the legal arrangement entered into by the Customer and the Supplier to the Agreement
Contracting Authority	Means the titled owner and manager of the Framework Agreement
Customer(s)	Means all public sector bodies or authorised accessing bodies who access and use the Agreement and who shall take full responsibility for their own individual Contracting processes.
Default	Means failure to perform a task or fulfil an obligation.
Goods/Services	Means the Goods or Services to be provided by the Supplier in accordance with the terms of the Agreement and/or individual order/Contract.
Licence	Means permission to use the Software on a non-exclusive basis and subject to the listed conditions.
Material Breach	Means a breach that has serious consequences on the outcome of the Contract.
Place of Use	Means the organisation with whom the Software physically rests and is used. This may be a direct Customer or a Customer of the Contracting Authority.
Price	Means the cost paid to a Supplier for the Goods/Services, on submission of an accurate invoice
Purchase Order	Means the document so described by the

	Customer to purchase the Goods and Services which makes reference to the Contract
Software	Means the various kinds of programs used to operate computers and related devices.
Software Documentation	Means associated documentation supplied with Software by the Supplier
Software Patches	Means modifications and improvements carried out to specific Software applications for the Customer.
Software Updates	Means officially issued Software changes as implemented by the Supplier to the Customer.
Specification	Means a defined requirement agreed between the Customer and Supplier.
Sub Contractor	Means a third party to the Contract that has no rights to the Contract.
Supporting Services	Means the Services that are supplied by the Supplier in support to the Purchase Order Goods and Services.
Supplier	Means the Supplier appointed as part of the tender process to the Agreement whom has agreed to supply Goods (and/or Services) under the terms, conditions and requirement of the Agreement and individual Purchase Orders/Contracts.

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and visa versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words “include”, “includes” and “ including” are to be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, modification, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted:

- 1.2.6 headings are included in the Contract for ease of reference only and shall not affect the interpretation of construction of the Contract; and
- 1.2.7 reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.3 At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in this Contract shall create or imply and form of employment, offer of employment, a relationship of agency, partnership or Joint Venture between the Customer and the Supplier, consequently neither the Party to the Contract will be able to act in the name of the other Party unless specifically mentioned within the Contract.
- 1.4 Unless otherwise stated within the Contract between the Parties, the obligation on the Customer is that stated under the Contract and nothing in the Contract shall act as an obligation upon or in any way constrain or hinder the Customer in any other capacity, nor shall the exercising of the duties or powers of the Customer in any other capacity lead to a liability under the Contract (however arising) on the part of the Customer to the Supplier.
- 1.5 **Inaccuracy of Information**
- The Supplier will be responsible for the accuracy of all information supplied to the Customer in connection to the supply of the Software. The Supplier shall be liable to pay the Customer for costs incurred due to inaccuracies, discrepancies, omissions, and damage therein.
- 1.6 **Conflict of Interest**
- The Supplier shall take all steps necessary to ensure that a situation where a conflict of Interest does not occur that will have an impact on the Customer. The Customer is to be satisfied that the Supplier is compliant with this request. The Supplier must promptly notify the Customer giving full details if any conflict arises or may arise. The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and or where the Customer deems it necessary to take steps to address the Conflict between the pecuniary or personnel interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. Any actions taken in relation to this clause shall not prejudice or affect any right of action or remedy, which shall be accrued or hereafter be accrued to the Customer.
- 1.7 **Prevention of Fraud**
- 1.7.1 The Supplier shall take all reasonable steps necessary to ensure prevention of any Fraud by staff of the Supplier (including all shareholders, directors, members) in connection with monies received from the Customer.
- 1.7.2 The Supplier shall notify the Customer as soon as practically possible, if it has reason to believe that Fraud has occurred, or is likely to occur.
- 1.7.3 If the Supplier commits any Fraud to this or any other Contract in place with the Customer then the Customer may:

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

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

2. Purchase of Software Licence

2.1 In consideration of all payments due under the Contract, the Supplier shall grant to the Customer a non-exclusive, royalty free, non-transferable Licence to use the Software in accordance with the Contract/Purchase Order subject as follows:

2.1.1 the Customer will at all times use the Software in accordance with any user manual for the Software supplied to the Customer by the Supplier; and

2.1.2 except to the extent that such acts may not lawfully be prohibited, the Customer will not access the Software its source code nor modify, adapt, disassemble, deconstruct or otherwise reverse engineer any or all of the Software; and

2.2 This Licence will continue until terminated in accordance with the Contract/Purchase Order.

3. Price and Variation

3.1 The Price shall be the Price agreed on award of the Contract.

The Price shall include:

3.1.1 the delivery of the Software, the Software Documentation

3.2.1 the provision of the Supporting Services; and

3.2.3 all levies and taxes payable in respect of any costs incurred to facilitate the delivery of the Software and documentation.

3.2 The Price shall not include Value Added Tax (VAT) which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.

3.3 The Contract Price shall only be varied:

3.3.1 due to a specific change in Law in relation to which the parties agree that a change is required to all or part of the Call Off Contract Price.

3.3.2 where all or part of the Call Off Contract Prices are reduced as a result of a reduction in the Framework Prices

4. Delivery

- 4.1 The Supplier shall provide the Goods and Services, on the date(s) specified in the Contract/Purchase Order.
- 4.2 The Software shall be delivered in the manner and quantity required by the Customer (which may be by instalments).
- 4.3 The Supplier shall, where applicable, be responsible for arranging carriage of the Software at the entire cost and risk of the Supplier.
- 4.4 The Supplier shall use all reasonable endeavours to deliver the Goods/Services to the premises stated in the Order (and/or, in the case of electronic delivery of Goods/Services, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date specified on the Contract.
- 4.5 The Software shall be deemed not to have been delivered unless and until the Customer has signed a delivery note acknowledging delivery (and, if required by the Contract/Purchase Order, installation) of the Software; (and for the avoidance of doubt where the Software is to be delivered by instalments the relevant delivery note for deemed delivery shall be the one signed on delivery of the final instalment) or, in the case of electronic delivery of Goods/Services, the Supplier receives confirmation of receipt.
- 4.6 The Supplier shall notify the Customer immediately on becoming aware that it may be unable to deliver or install the Software to or at the premises specified in the Contract/Purchase Order and/or on the day(s) and/or at the times specified in the Contract or in accordance with any instructions specified.
- 4.7 In the event of any failure on the part of the Supplier to deliver the Software in accordance with this Contract/Purchase Order the Customer may (without prejudice to its other rights under this Contract/Purchase Order):
 - 4.7.1 terminate this Contract/Purchase Order as set out in Clause 25 (Termination); or
 - 4.7.2 specify by written notice to the Supplier such revised delivery date(s)/days and/or times as it sees fit, or
 - 4.7.3 order from an Alternative Supplier. Any additional costs will be passed to the Contracted Supplier.
- 4.8 In the case that any of the Software delivered by the Supplier are not in accordance with the terms of this Contract/Purchase Order the Customer shall have the right to reject such Software within a reasonable time and to purchase Software elsewhere as near as practicable to the same Specification and conditions as circumstances shall permit without prejudice to any other right which the Customer may have against the Supplier; and the making of payment shall not prejudice the Customer right of rejection.

4.9 The Customer shall have the right to require the Supplier at the Supplier's own risk and expense to collect and replace any rejected Software and if the Supplier does not remove the rejected Software within the advised timescale the Customer shall be entitled to arrange for the removal of the Software and to charge the cost of the removal to the Supplier.

4.10 In the event that the Customer rejects any Software it may (at its absolute discretion):

4.10.1 terminate this Contract/Purchase Order or any part thereof without prejudice to its existing rights and remedies; and/or

4.10.2 recover as a debt due from the Supplier all extra costs and expenses arising from or in connection with the rejection of the Software including but not limited to the cost of purchasing alternative as close to the Specification as possible Software from elsewhere.

5. Technical Support

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

6. Replacement and Substitution of Personnel

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

7. Title and Risk (Software)

7.1 If appropriate title to the Licence shall transfer to the Customer on payment of the Price.

7.2 Under the terms and conditions of the Contract/Purchase Order the Customer shall at its discretion be entitled to sell transfer lease charge assign by way of security or otherwise deal in or encumber any related equipment and/or documentation. The Supplier is then to recognise and transfer any outstanding business relationship to the new owner of the rights of use for the duration of the Software use.

7.3 Risk in the Software Documentation shall pass to the Customer upon the actual acceptance date.

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

8. Warranties (Software)

- 8.1 Subject to the limitations upon its liability set out in Condition 12 (Limitation of Liability) the Supplier warrants to the Customer that:
- 8.1.1 the media, or structure of the Software, upon which the Software and Software Documentation are stored, or built, will for a period of 30 days from the acceptance date, as agreed between the parties, be free from defects in materials design and workmanship;
 - 8.1.2 the Software will, for a period as agreed between the parties from the agreed acceptance date, as agreed between the parties, conform to the Software Specifications;
 - 8.1.3 the Software will not suffer any adverse effects as a result of any change in date;
 - 8.1.4 its title and property in the Software and Software Documentation is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this Contract;
- 8.2 The Customer shall give notice to the Supplier as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 8.3 The Supplier shall investigate any alleged breach of warranty within 24 hours of being informed of the fault and in the case of a breach of warranty falling within clause 8.1 above shall remedy the same free of charge by replacing the Media or issuing additional Software Patches or Updates as are required to deliver the stated application.
- 8.4 The obligations of the Supplier under Condition 8.3 above shall be discharged between the following 24 hours or the hours as agreed with the Customer
- 8.5 Any Software replaced by the Supplier pursuant to clause 8.3 shall upon replacement be deemed as the Software as required within the original purchase and the Supplier warrants that the replacement Software or supplied patches and or upgrades to the Software shall be free and unencumbered or that it shall have all necessary consents and authorities to part with possession of the Software
- 8.6 Subject to the foregoing and with the exception of the condition and warranties implied by section 12 of the Sale of Goods Act 1982 all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Software are hereby excluded.

9. Intellectual Property Infringement (Software)

- 9.1 The Supplier will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Software and/or the Software Documentation by the Customer that infringes the patent copyright

registered design or trade mark rights of the said third party (an 'Intellectual Property Infringement') provided that the Customer:

- 9.1.1 as soon as practicable gives notice to the Supplier of any Intellectual Property Infringement upon becoming aware of the same
 - 9.1.2 gives the Supplier the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of the Supplier; and
 - 9.1.3 acts in accordance with the reasonable instructions of the Supplier and gives to the Supplier such assistance, as it shall reasonably require in respect of the conduct of the said defence.
- 9.2 The Supplier shall reimburse the Customer its reasonable costs for the avoidance of doubt (including the cost of any time spent by the employees of the Customer in connection with this matter) incurred in complying with the provisions of Clause 9.1 above.
- 9.3 The Supplier shall have no liability to indemnify the Customer in respect of an Intellectual Property Infringement if the same results from:
- 9.3.1 any unauthorised alteration modification or adjustment made by the Customer to the Software or Software Documentation without the prior consent of the Supplier; or
 - 9.3.2 the combination connection operation or use of the Software and / or the Software Documentation with any other equipment or documentation not endorsed by the Supplier.
- 9.4 In the event of an Intellectual Property Infringement the Supplier shall be entitled at its own expense and option either to:
- 9.4.1 procure the right for the Customer to continue using the Software, and / or Software Documentation; or
 - 9.4.2 make such alterations modifications or adjustments to the Software and / or Software Documentation that they become non-infringing without incurring a material diminution in performance or function; or
 - 9.4.3 replace the Software and / or Software Documentation with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 9.5 If the Supplier in its reasonable judgement is not able to exercise any of the options set out at clauses 9.4.1, 9.4.2 or 9.4.3 above within 14 days of the date it received notice of the Intellectual Property Infringement then it shall at its own expense retake possession of the Software and / or Software Documentation upon payment to the Customer of:

- 9.5.1 the Price less depreciation calculated at a rate of one tenth of the Price for each full year from the acceptance date, agreed by the parties (and pro rata for any period of less than a year);
 - 9.5.2 the actual costs of the Customer (including costs for time of its own employees) reasonably incurred in the preparation of the Place of Use to the extent that the Customer no longer intends to use the same as a computer installation or its preparation is not suitable for alternative Software;
 - 9.5.3 any special delivery costs; and
 - 9.5.4 all other damages that the Customer has suffered as a result of the said Intellectual Property Infringement.
- 9.6 The provisions of Condition 11 shall not apply to this clause 9.

10. Copying of the Software or Software Documentation

The Customer shall be entitled to make one back-up copy of each of the Software or Software Documentation for business continuity purposes at no additional cost to the Customer. Any such copy shall in all respects be subject to the Conditions of the Contract and shall be deemed to part of the Software.

11. Supplier liability/Indemnity

11.1 The following provisions set out the Suppliers entire liability (including any liability for the acts and omissions of its employees agents and sub-Contractors) to the Customer in respect of.

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

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

11.2 Any act or omission on the part of the Supplier or its employees agents or Sub-Contractors falling within clause 11.1 shall for the purposes of this clause 11 be known as an 'event of Default'.

11.3 The Supplier's liability to the Customer for:

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

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

Shall not be limited.

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

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

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

11.7 Except in the case of an event of Default arising under clause 11.3 the Supplier shall have no liability to the Customer in respect of any direct losses in the event of Default unless the Customer shall have served notice of the same upon the Supplier within 2 years of the date it became aware of the circumstances giving rise to the event of Default or the date when it ought reasonably to have become so aware.

11.8 Nothing in this clause 11 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

11.9 In order to cover its liabilities the Supplier shall maintain, and require that any permitted Sub Contractors maintain, throughout the Period of Contract

11.9.1 Product Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims

11.9.2 Public Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims

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

11.9.4 The Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier.

11.9.5 any other insurances required under any applicable legislation or at time of Contract.

If supplying a technical or professional supporting service to the products:

11.9.6 Professional Indemnity Insurance – limit £2 million (Two million pounds sterling) per claim or series of related claims, if supplying an associated service.

11.10 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to above the Customer may:

11.10.1 at its discretion arrange suitable cover. Any premiums paid by the Customer to affect such insurance on behalf of the Supplier shall be recoverable from the Supplier or, at the Customer option, deducted from any money owed to the Supplier.

11.10.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) days of notification.

11.10.3 cancel this Contract with immediate effect.

11.11 If the Customer requires a variant level of insurance then this will be requested at the mini competition stage of the Contract. Failure to revise the insurance level may cause exclusion from the process. The Supplier is not to offer any level of insurance below that stated in clauses 11.9.1, 11.9.2, 11.9.3, and 11.9.6.

12. Indemnity

12.1 The Supplier will indemnify the Customer against:

12.1.1 breaches in respect of any matter arising from the supply of the Software and/or Supporting Services resulting in any successful claim by any third party to the extent of the Supplier negligence.

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

12.2.1 Subject to clause 11.3 the Supplier's total aggregate liability shall in no event exceed the higher of two million pounds (£2,000,000) or a sum equal to one hundred and twenty-five per cent (125%) of the Price in the Contract Period in respect of all direct liability loss damages costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the **Customer** as a result of or in connection with:

12.2.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in clause 8;

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

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

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

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

13 Grant of Licence and Provision of Services

13.1 The Supplier in consideration of the payment by the Customer in one payment, or from time to time, of the Licence Fee in accordance with Clause 14 (Licence Fee) hereby:

13.1.1 grants the Customer a non exclusive Licence to use the Licensed Programmes (and where appropriate the Programme Documentation) upon the equipment and the possess and refer to the Programme Documentation; and

13.1.2 undertakes to the Customer to provide the Services upon the terms and conditions of the Contract.

14 Licence Fee

The Licence fee, as levied by the Supplier on the Customer will reflect the pricing details stated within the Specifications of the individual Lots 1 – 3.

15 Headings

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.

16 Conditions Applicable

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

17 Payment

- 17.1 The Customer shall only make payment after delivery of all the Software specified in the relevant Contract/Purchase Order and where delivery is by instalments payment shall be made after delivery of each instalment and after receipt by a duly authorised officer of the Customer of a detailed invoice showing correct invoice value (and where VAT is payable, a VAT invoice) clearly stating the Contract/Purchase Order Number as appropriate.
- 17.2 Where the provisions of clause 17.1 have been complied with payments will normally be made by the Customer within 30 days of the tax point of the invoice(s). The Customer reserves the right to withhold payment where the provisions of clause 17.1 have not been complied with.
- 17.3 The Contracting Authority shall not be held responsible for payments due from individual Customers.

18 Monetary Union

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

19 Set-Off and Counterclaim

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

20 Notices

- 20.1 Any notice to be served on either of the parties by the other shall be in writing and sent by first class post to the address of the relevant party shown at the head of this Purchase Order/Contract or by electronic mail and shall be deemed to have been received by the addressee within seventy two (72) hours of posting or twenty four (24) hours if sent by by electronic mail to the correct address For the purpose of address for each Party:
- 20.2 For the Customer – The address set out on the Purchase Order / Contract.
- 20.3 For the Supplier – The address set out in the Framework Agreement.
- 20.4 Either Party may change the contact address for service by notifying the Party by servicing a notice using this clause.

21 Severance

Any provision of this Purchase Order/Contract that is or may be void or unenforceable shall, to the extent of such invalidity or unenforceability be

deemed severable and shall not affect any other provision of this Contract that shall remain in force to the fullest extent possible.

22 Waiver

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

23 Assignment

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

24 Force Majeure

Neither party to the Contract shall be liable for any Default due to any act of God War Fire Flood Drought Tempest or other event beyond the reasonable control of either party. If a state of Force Majeure exists to the extent that the individual Contract/ Purchase Order cannot be executed for a continuous period of six (6) months the Contract shall be automatically terminated with no liability on either party.

25 Termination

25.1 The Customer may terminate the Agreement with justifiable cause, which will be determined by the parties, on giving the Supplier (thirty) 30 days' written notice.

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

25.3 The Customer may terminate the Purchase Order/Contract at any time before all of the Goods/Services are delivered by giving written notice.

25.3.1 the Supplier shall cease to be bound to deliver and the Customer shall cease to be bound to receive delivery of any further Software:

25.3.2 the Customer shall cease to be bound to pay that part of the Price that relates to the Software that has not been delivered:

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

25.4 The Customer may terminate this Contract at any time, where the Supplier (in the case of an individual) a petition is presented and not dismissed within 14 days for 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.

- 25.5 A proposal is made for a voluntary arrangement within Part 1 of the insolvency Act 1986 or any other composition or arrangement with, or assignment for the benefit of creditors or shareholders.
- 25.6 The Supplier becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986.
- 25.7 In any event similar to those listed in the clause 25 which occur under law of or other jurisdiction. Or in the case where the Supplier is an individual:
- 25.8 the Supplier is unable to pay its debts or has no prospect of doing so within the meaning of Section 268 of the Insolvency Act 1986; or
- 25.9 a creditor or encumbrancer attaches or takes possession of, or a distress execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Suppliers assets and such attachment or process is not discharged within 14 days; or
- 25.10 the Supplier suspends or ceases, or threatens to suspend or cease to carry out on all or a substantial part of his business.
- 25.11 The Supplier shall notify the Customer as soon as practically possible if the Supplier undergoes a change of control. The Customer may terminate the Contract by notice within 6 months of: -
 - 25.11.1 being notified that a Change Control has occurred; or
 - 25.11.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control;

But shall not be allowed to terminate where an approval was granted prior to the Change of Control.

Termination on Default

- 25.12 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if: -
 - 25.12.1 The Supplier has not remedied the Default to the requirements of the Customer within Twenty days (20) working days, or such period as may be specified by the Customer, after issue of a written notice stating the Default and requesting the Default to be remedied; or

25.12.2 the Default is not capable, in the reasonable opinion of the Customer, capable of remedy; or

25.12.3 the Default is a material Breach of the Contract.

25.13 If the Customer fails to pay the Supplier undisputed sums of money when agreed by Contract, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums then: -

25.13.1 Interest on payment shall not be subject to the Late Payment of Commercial Debts Interest Act, 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations, 2002 until the completion of the Dispute Resolution Process or receipt of the decision from the adjudicator, in accordance with the agreed Dispute Resolution process.

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

25.14 If the Customer refuses to pay the outstanding undisputed payments to the Supplier, then the Supplier will be able to terminate the individual Contract after a period of ninety (90) days of the date of such written notice, save that the such right of termination shall not apply where the Customer is exercising its rights under clause 17 (Payment).

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

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

Break

25.17 The Customer shall have the right to terminate this Contract giving Sixty (60) days written notice to the Supplier.

Framework Agreement

25.18 Individual Contracts will continue to run even if the Framework is terminated unless terminated by the Customer of the individual order.

Termination by the Supplier

25.19 The Supplier shall have the right to terminate the Call off / Order, by giving 3 months notice:

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

Consequences of Termination

- 25.20 Where the Customer terminates the Contract under clause Termination on Default (25.12 – 25.16) and then makes other arrangements for the supply of the products the Customer may recover the reasonable costs, from the original Supplier, incurred to make those arrangements and any additional costs incurred during the remainder of the original Contract period. Where the Contract is terminated under the clause Termination on Default (25.12 – 25.16) no further payments shall be payable to the Supplier by the Customer, until the Customer has established the final cost for making these arrangements.

26 Disruption

- 26.1 The Supplier shall take reasonable care to ensure that the performance of the Contract by the Supplier does not disrupt the operations of the Customer, its employees and any of its Suppliers working under control of the Customer.
- 26.2 The Supplier shall inform the Customer as soon as practically possible of any potential or actual industrial action, that will cause effect to the Customer and delivery to the Contract.
- 26.3 In the event of any Industrial action or anticipated delay the Supplier will seek acceptance of alternative plans to ensure supply to the Contract.
- 26.4 If the proposals are deemed as insufficient to ensure Contract delivery, this will be deemed as a Material Breach and the Contract maybe terminated in accordance with clause 25.12
- 26.5 If the disruption is caused by direction of the Customer then the Customer will make an allowance to the Supplier of any proven expense, for direct cost, that has been agreed by the Customer, as a direct result of the disruption.

27 Recovery upon termination

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

- 27.1 Return to the Customer all confidential Information and any IPRs belonging to the Customer that are in the Suppliers or its Sub Contractors possession
- 27.2 Deliver to the Customer all property, including materials, documents, information etc that has been provided by the Customer.
- 27.3 Where the end of the Contract arises due to the Suppliers Default, the Supplier shall provide all assistance to complete the Clause 27.1 and

27.2 free of charge and within timescales stated. If this is not complied with the Supplier shall pay the Customer additional costs to achieve the stated recovery dates.

27.4 compliance with Clause 27.1 and 27.2 shall be within 5 working days from Termination of the Contract.

28 Bribery, Corruption and Collusion

28.1 The Customer shall be entitled immediately to terminate this Agreement with the Supplier and to recover from the Supplier the amount of any loss resulting from such termination if:

28.1.1 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 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.

28.1.2 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).

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

28.1.4 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:

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

28.1.4.2 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:

28.1.4.3 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.

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

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

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

29.1.1 The Official Secrets Act 1911 to 1989; and

29.1.2 Section 182 of the Finance Act 1989

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

30 Confidentiality

30.1 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.

30.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Contract:

30.2.1 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;

30.2.2 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.

30.3 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.

30.4 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Contract.

30.5 The provisions of Clauses 31.1 to 31.4 shall not apply to any Confidential Information received by one Party from the other:

30.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

- 30.5.2 which was in the possession of the other Party previous to entering into the Contract
 - 30.5.3 that is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure:
 - 30.5.4 is independently developed without access to the Confidential Information; or
 - 30.5.5 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.
- 30.6 Nothing in this Condition shall prevent the Customer:
- 30.6.1 disclosing any Confidential Information for the purpose of:
 - 30.6.1.1 the examination and certification of the Customer's accounts; or
 - 30.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources; or
 - 30.6.2 disclosing any Confidential Information obtained from the Supplier:
 - 30.6.2.1 to any other department, office or agency of the Crown; or
 - 30.6.2.2 to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Contract:
 - 30.6.2.3 provided that in disclosing information under subparagraph 31.6.2.1 or 31.6.2.2 the Customer discloses only the information, which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 30.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract/Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 30.8 In the event that the Supplier fails to comply with this Condition 30, the Contracting Authority reserves the right to terminate the Agreement and/or the Customer reserves the right to terminate the Contract/Purchase Order by notice in writing with immediate effect.

- 30.9 The Supplier and the Customer hereby undertakes to the other that during the currency of this Contract/Purchase Order and for the period of 12 months following upon its termination or expiry it will not directly or by its agent or otherwise and whether for itself or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.
- 30.10 For the purposes of the Customer's undertaking under this clause 30 the information shall be deemed to include all information (written or oral) concerning the Purchase Order requirement. The provisions under this clause 30 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

31 Freedom of Information

- 31.1 The Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and cooperate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 31.2 The Supplier shall and shall ensure that its Sub-Contractors shall
- 31.2.1 transfer the request for information to the Customer as soon as practicable after receipt and in any event within two working days of receiving a request for information;
 - 31.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within five working days (or such other period as the Customer may specify) of the Customer requesting that information; and
 - 31.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 31.3 The Customer shall be responsible for determining at its absolute discretion whether:
- 31.3.1 the information is exempt from disclosure under the Freedom of Information Act and the Environmental Information Regulations
 - 31.3.2 the information is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 31.4 The Supplier acknowledges that the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:
- 31.4.1 without consulting with the Supplier, or:

31.4.2 following consultation with the Supplier and having taken its views into account.

31.5 The Supplier shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time. The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with Clause 31.4.

32 Data Protection

32.1 The Supplier(s) will be required to comply with all relevant aspects of the Data Protection Act of 1998 and European GDPR (General Data Protection Regulation) upon introduction May 2018. Any Customer information which is supplied to the Supplier(s) shall remain the property of the Customer and it is a requirement that this information is returned when no longer required. Anyone found in breach of the DPA could face the following:

- Monetary penalty notices: fines of up to £500,000 for serious breaches of the DPA.
- Prosecutions and possible prison sentences for deliberately breaching the DPA.
- Undertakings: organisations have to commit to a particular course of action to improve their compliance and avoid further action from the ICO (Information commissioner's Office).
- Enforcement notices: organisations in breach of legislation are required to take specific steps in order to comply with the law.

32.2 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 and will 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.

32.3 In particular without limitation the Supplier shall:

32.3.1 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

32.3.2 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 Customer which may be refused at the Customer's sole discretion, and

32.3.3 As required by Schedule 1 Part II of the Data Protection Act 1998 the Supplier shall:

32.3.3.1 Only carry out processing (as defined in the Data Protection Act 1998) on the Customer's instructions, and

32.3.3.2 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 Customer.

32.4 Without prejudice to Clause 32.2, 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/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.

33 Rights of Third Parties

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

34 Publicity

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

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

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

35 Security

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

35.2 The Customer shall provide to the Supplier all information available to ensure that the Supplier can comply with clause 35.1.

36 Records and Audit Access

36.1 The Supplier shall keep all full and accurate records and accounts appertaining the Contract for one year after the date of Contract termination, or as long as required by the Contract.

- 36.2 The Supplier shall ensure that all accounting records are kept in accordance with good accounting practice.
- 36.3 The Supplier shall on request allow the Customer and its Auditors such access to Contract related documentation as may be required from time to time.
- 36.4 Documentation relating to Accounts and specifically identified records as requested by the Customer and its Auditor must be made available to the Customer as identified and for a period of one year after expiry of the Contract.
- 36.5 The Customer will make all reasonable endeavours to ensure that any audit of the Supplier causes minimal delay or disruption to the Supplier. The Supplier accepts that then direct control of the Auditor is outside the control of the Customer.
- 36.6 Subject to the Customer's rights on Confidential Information the Supplier will provide the Auditors with all reasonable assistance to complete the Audit.
- 36.7 both Parties agree that there will be no cost to the Contract, unless a material Breach is identified in which case the Supplier will reimburse the Customer with all costs incurred in relation to that audit and subsequent action in relation to the identified Material Breach.

37 Transfer and Sub Contracting

- 37.1 The Supplier shall not assign, novate, Sub Contract or in any way dispose of the Contract or any part of it without written prior approval from the Customer, which will not be unnecessarily withheld.
- 37.2 The Supplier shall be responsible for all acts, and omissions of its Sub Contractors.
- 37.3 Where approval has been given to the Supplier to engage Sub Contractors, a copy of the Sub Contract shall be made available to the Customer.
- 37.4 subject to Clause 37.6 the Supplier may assign or novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- 37.4.1 any Customer
- 37.4.2 Any body established by the Crown or under statute in order to substantially perform any functions that had previously been performed by the Customer.
- 37.4.3 Any Private / Third sector body which substantially performs the functions of the Customer.

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

- 37.5 Any change to the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to clause 37.6, affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 37.6 If the rights and obligations are assigned, novated or otherwise disposed of under the Contract relating to clause 37.4 to a body which is not a Contracting body or if there is a change in the Legal status of the Customer, such as it ceases to be a Contracting Authority, in the remainder of the clause both bodies will be referred to as '**the Transferee**': -
- 37.6.1 the rights of termination of the Customer in Clause 25 shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency or Default of the Transferee; and
- 37.6.2 the transferee shall only be able to assign, novate, or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.
- 37.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier, which relates to the performance of the Suppliers obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such confidential Information only for the purpose relating to the performance of the Suppliers obligations under the Contract and for no other purposes and shall take all steps to ensure that the Transferee gives a confidential Information undertaking in relation to the Confidential Information.
- 37.8 Each of the Parties shall at its own cost carry out, or use reasonable endeavours to carry out, whatever further actions, including the issue of further documentation that the other Party requires, from time to time, for the purpose of giving the other party the full benefit of the provisions of the Contract.

38 Variation

- 38.1 Subject to the provisions of this Clause 38, the Customer may request a variation to Goods/Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "variation".
- 38.2 The Customer may request a variation by completing and sending the variation form attached at Appendix A ("Change Control Notice") to the Supplier giving sufficient information for the Supplier to assess the extent of the variation and any additional cost that may be incurred. The Supplier shall respond to a request for a variation within the time limits specified in the Change Control Notice. Such time limits shall be reasonable having regard to the nature of the Order.

- 38.3 In the event that the Supplier is unable to provide the Variation to the Goods/Services or where the Parties are unable to agree a change to the Contract Price, the Customer may: -
- 38.3.1 agree to continue to perform their obligations under the Contract without the Variation; or
 - 38.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 46.
- 38.4 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

39. Remedies in the event of inadequate performance

- 39.1 Where a complaint is received about the standard of Goods/Services or about the manner in which any Goods/Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Suppliers obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 25 Termination - (Termination on Default) of the Contract.
- 39.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 25 – Termination – (Termination on Default), do any of the following:-
- 39.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Goods/Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Goods/Services in accordance with the Contract;
 - 39.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods/Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods/Services;
 - 39.2.3 terminate, in accordance with Clause 25 – Termination - (Termination on Default), the whole of the Contract; and/or
 - 39.2.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any

reasonable administration costs) in respect of the supply of any part of the Goods/Services by the Supplier or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods/Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods/Services.

- 39.3 If the Supplier fails to supply any of the Goods/Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

39.4 In the event that the Supplier: -

39.4.1 fails to comply with Clause 39.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

39.4.2 persistently fails to comply with Clause 39.3 above;

The Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

- 39.5 Without prejudice to any other right or remedy which the Customer may have, if any Goods/Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of, the Contract the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods/Services have been accepted by the Customer: -

39.5.1 to rescind the Order;

39.5.2 to reject the Goods/Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods/Services so returned shall be paid forthwith by the Customer;

39.5.3 at the Customer's option to give the Supplier the opportunity at the Suppliers expense to either remedy any defect in the Goods/Services or to supply replacement Goods/Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

39.5.4 to refuse to accept any further deliveries of the Goods/Services but without any liability to the Customer;

39.5.5 to carry out at the Suppliers expense any work necessary to make the Goods/Services comply with the Contract; and

39.5.6 to claim such damages as may have been sustained in consequence of the Suppliers breach or breaches of the Contract.

40 Cumulative Remedies

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

41 Monitoring of Contract Performance

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

42 Entire Contract

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

42.2 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 42.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of this Contract.

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

42.3.1 the Order

42.3.2 the clauses in the Contract

42.3.3 any other documentation referred to in the clauses of the Contract.

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

43 Diversity

Throughout the duration of this Contract the Supplier shall and in addition shall ensure that its Sub Contractors shall discharge their obligations under this Contract and supply the Software and/ or perform the Services in

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

44 Acceptance of Conditional Tender

- 44.1 If a Contract is entered into following the submission and acceptance of a conditional tender by the Customer, the Customer reserves the right to remove such condition at anytime during the term of the Contract without penalty or incurring additional cost by the giving of 30 days' notice in writing.
- 44.2 The Supplier in accepting the Customer's request for removal of said condition shall continue to provide the remaining element of the Contract in accordance with the terms as stated in the Contract.
- 44.3 If the Supplier rejects the Customer request for removal of said condition or wishes to increase the cost of delivery of the remaining Software or service then the Customer reserves the right to terminate the Contract by the giving of notice in accordance with the Termination Clause 25 contained herein.

45 Arbitration

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

46 Dispute Resolution Procedure

- 46.1 The parties shall attempt to resolve any disputes (other than those relating to the termination of this Contract in whole or in part) arising under or in relation to this Contract by initially following the Escalation Procedure, in the event the Escalation Procedure fails to achieve agreement or in exceptional circumstances the Customer reserves the right to refer the matter to the Dispute Resolution Procedure identified below.
- 46.2 If the parties have failed to resolve a dispute by following the Escalation Procedure, then the Customer authorised representative and the Suppliers Managing Director shall hold formal discussions during a period of twenty (20) Working Days to attempt to resolve the dispute in good faith. If the Customer authorised representative and the Suppliers Managing Director determine in good faith that resolution through continued discussions does not appear likely within

such twenty (20) Working Day period, then the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.

- 46.3 The specific format for the discussions shall be determined at the discretion of the parties, but may include the preparation of agreed statements of fact or written statements of position.
- 46.4 Proposals and information exchanged during the informal proceedings described in this clause between the parties shall be privileged, confidential and without prejudice to a party's legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.
- 46.5 In the event that the parties fail to agree the resolution of the dispute at the end of the mediation, either party may then invoke legal proceedings to seek determination of the dispute.
- 46.6 The parties agree that they shall not commence legal proceedings until the Dispute Resolution Procedure has been exhausted.
- 46.7 The Supplier shall continue to provide the Software and/or Services in accordance with the terms of this Contract until a dispute has been resolved.
- 46.8 Nothing in this Dispute Resolution Procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

47 Escalation Process

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

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

Escalation Path relating to Product or Service Delivery Failure

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

48 Jurisdiction

This Contract shall be governed and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales (but subject always to the Arbitration provisions in Clause 45).

Appendix A Change Control Notice (CCN)

This notice is to be completed whenever there is a modification, addition or deletion from the original Agreement/Contract documentation. Failure to embed the change into the Agreement/Contract may cause contractual issues. This document is to be signed by an authorised representative of the Supplier and the Contracting Authority.

Sequential Number:

Title:

Number of pages attached:

WHEREAS the Supplier and the Contracting Authority entered into an Agreement for the supply of Supply of Software Products & Associated Services dated [date] (the "Original Agreement") and now wish to amend the Original Agreement

IT IS AGREED as follows

- a. With effect from [date] the Original Agreement shall be amended as set out in this Change Control Notice.
- b. Save as herein amended all other terms and conditions of the Original Agreement shall remain in full force and effect.

Changes to the Agreement referred to in (1) above.

Signed for and on behalf of the Supplier

By

Name

Title

Date

Signed for and on behalf of the Contracting Authority

By

Name

Title

Date.....