

## Short Form Agreement

### General Terms and Conditions of Contract

#### 1 Interpretation

1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer and (ii) the Supplier
“Award”	means a Purchase Order and/or an Award Letter from the Customer to the Supplier in association with these terms and conditions;
“Charges”	means the charges for the <i>Goods</i> or <i>Services</i>
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means West Yorkshire Fire & Rescue Authority
“Expiry Date”	means the date for expiry of this Agreement
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	means the General Data Protection Regulations 2016
Goods	Means the goods to be supplied by the Supplier to the Customer under this Agreement
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons notified as such in writing by either Party to the other Party,
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the GDPR) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the <i>Goods</i> or <i>Services</i> ;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under this Agreement;
“Specification”	means the specification for the <i>Goods</i> or <i>Services</i> (including as to quantity, description and quality) as specified by the Customer;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under this Agreement;

- “Staff Vetting Procedures” means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
- “Supplier” means the company or person to which the contract is awarded;
- “Term” means the period from the start date of this Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 5.2 or terminated in accordance with the terms and conditions of the Agreement;
- “VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.
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### Document Change Control

Ref	Details of Change	Effective Date
1	Clause 6.4 added that requires Suppliers to submit invoices in PDF format to <i>marketplace.invoices@kirklees.gov.uk</i>	19.08.2019
2		
3		
4		

**1 In these terms and conditions, unless the context otherwise requires:**

- 1.1.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.1.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.1.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.1.5 the word 'including' shall be understood as meaning 'including without limitation'.

**2 Basis of Agreement**

- 2.1 Time shall be of the essence of this Agreement.
- 2.2 The Purchase Order and/or Award Letter constitute an offer by the Customer to purchase the *Goods* or *Services* subject to and in accordance with the terms and conditions of this Agreement.
- 2.3 An offer based on an Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within [7] days of the date of the Award Letter.

**3 Supply & Delivery of Goods**

- 3.1 In supplying the *Goods*, the Supplier shall co-operate with the Customer in all matters relating to the supply of *Goods* and comply with all the Customer's instructions.
- 3.2 The Supplier shall supply the *Goods* in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the *Goods* supplied under this Agreement shall:
  - 3.2.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after delivery;
  - 3.2.2 be of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the *Goods*;
  - 3.2.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
  - 3.2.4 be free from design defects;
  - 3.2.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
  - 3.2.6 and the Supplier itself shall, comply with all applicable laws.

- 3.3 Unless otherwise agreed in writing by the Customer delivery of the *Goods* shall be completed once the completion of unloading the *Goods* from the transporting vehicle at the delivery address has taken place and the Customer has signed for the delivery.
- 3.4 Delivery of the *Goods* shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the *Goods* and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 3.5 Unless otherwise stipulated by the Customer deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 3.6 Where (i) the Supplier fails to deliver the *Goods* or part of the *Goods* or (ii) the *Goods* or part of the *Goods* do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
  - 3.6.1 to terminate this Agreement;
  - 3.6.2 request the Supplier, free of charge, to deliver substitute *Goods* within the timescales specified by the Customer;
  - 3.6.3 to require the Supplier, free of charge, to repair or replace the rejected *Goods*, or to provide a full refund of the price of the rejected *Goods* (if paid);
  - 3.6.4 to reject the *Goods* (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those *Goods* or part of *Goods* duly returned;
  - 3.6.5 to buy the same or similar *Goods* from another supplier and
  - 3.6.6 to recover any expenses incurred in respect of buying the *Goods* from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

#### **4 Supply of Services**

- 4.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the *Services* to the Customer for the Term subject to and in accordance with the terms and conditions of this Agreement.
- 4.2 In supplying the *Services*, the Supplier shall:
  - 4.2.1 co-operate with the Customer in all matters relating to the *Services* and comply with all the Customer's instructions;
  - 4.2.2 perform the *Services* with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 4.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
  - 4.2.4 ensure that the *Services* shall conform with all descriptions and specifications set out in the Specification;
  - 4.2.5 comply with all applicable laws; and
  - 4.2.6 provide all equipment, tools and vehicles and other items as are required to provide the *Services*.

- 4.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the *Services*. In the event that the Supplier agrees to any variation to the scope of the *Services*, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

## 5 Term

- 5.1 An Agreement for *Services* shall take effect on the date specified in the Purchase Order and/or Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 5.2 or terminated in accordance with the terms and conditions of this Agreement.
- 5.2 The Customer may extend this Agreement for *Services* for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of this Agreement shall apply throughout any such extended period.

## 6 Charges, Payment and Recovery of Sums Due

- 6.1 The Charges for the *Goods* or *Services* shall be as set out in the Purchase Order and / or Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the *Goods* or *Services*. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the *Goods* or *Services*.
- 6.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the *Goods* or *Services*.
- 6.3 The Supplier shall invoice the Customer as specified in this Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the *Goods* or *Services* supplied in the invoice period.
- 6.4 Invoices must be submitted in PDF format: to [marketplace.invoices@kirklees.gov.uk](mailto:marketplace.invoices@kirklees.gov.uk)
- 6.5 In consideration of the supply of the *Goods* or *Services* by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under this Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 6.6 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 6.4 after a reasonable time has passed.
- 6.7 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the *Goods* or *Services* unless the Supplier is entitled to terminate this Agreement for a failure to pay undisputed sums in accordance with clause 17.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 6.8 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.9 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:

- 6.9.1 provisions having the same effects as clauses 6.3 to 6.7 of this Agreement; and
  - 6.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 6.3 to 6.8 of this Agreement.
  - 6.9.3 In this clause 6.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 6.10 If any sum of money is recoverable from or payable by the Supplier under this Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under this Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **7 Premises and equipment**

- 7.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the *Goods* or *Services*. All equipment, tools and vehicles brought onto the Customer’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
- 7.2 If the Supplier supplies all or any of the *Goods* or *Services* at or from the Customer’s premises, on completion of the *Services* or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the *Services* and leave the Customer’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 7.3 If the Supplier supplies all or any of the *Goods* or *Services* at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant *Goods* or *Services* are supplied at or from the relevant premises.
- 7.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer’s premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer’s security requirements.
- 7.5 Where all or any of the *Goods* or *Services* are supplied from the Supplier’s premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 7.6 Without prejudice to clause 4.2.6, any equipment provided by the Customer for the purposes of this Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out this Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of this Agreement.
- 7.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing



within 5 Working Days.

## **8 Staff and Key Personnel**

- 8.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Agreement to supply *Services*, it may, by giving written notice to the Supplier:
- 8.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 8.1.2 direct the Supplier to end the involvement in the provision of the *Services* of the relevant person(s); and/or
  - 8.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 8.2 The Supplier shall:
- 8.2.1 ensure that all Staff involved in delivering *Services* are vetted in accordance with appropriate Staff Vetting Procedures and if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time;
  - 8.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with this Agreement; and
  - 8.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 8.3 Any Key Personnel shall not be released from supplying the *Services* without the prior agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave and termination of employment or other extenuating circumstances.
- 8.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the *Services*.

## **9 Assignment and sub-contracting**

- 9.1 The Supplier shall not without the written consent of the Customer assign, sub-contract and novate or in any way dispose of the benefit and/ or the burden of this Agreement or any part of this Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 9.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 9.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under this Agreement.

## 10 Intellectual Property Rights

- 10.1 The Supplier grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the *Goods* or in any materials accompanying the *Goods* to the extent that it is necessary to fulfil its obligations under this Agreement.
- 10.2 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement to deliver *Services* shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under this Agreement.
- 10.3 All intellectual property rights in any materials created or developed by the Supplier pursuant to this Agreement or arising as a result of the provision of the *Services* shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 10.4 The Supplier hereby grants the Customer:
- 10.4.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-licence) to use all intellectual property rights in the materials created or developed pursuant to this Agreement and any intellectual property rights arising as a result of the provision of the *Services*; and
- 10.4.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use:
- (a) any intellectual property rights vested in or licensed to the Supplier on the date of this Agreement; and
- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to this Agreement nor arise as a result of the provision of the *Services*,
- including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of this Agreement including the *Services* provided.
- 10.5 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the *Goods* or *Services*, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## 11 Governance and Records

- 11.1 The Supplier shall:
- 11.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 11.1.2 submit progress reports to the Customer at the times and in the format specified by the



Customer.

- 11.2 The Supplier shall keep and maintain until 6 years after the end of this Agreement, or as long a period as may be agreed between the Parties, full and accurate records of this Agreement including the *Goods* or *Services* supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with this Agreement.

## 12 Confidentiality, Transparency and Publicity

12.1 Subject to clause 12.2, each Party shall:

12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

12.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement.

12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

12.2.2 to its auditors or for the purposes of regulatory requirements;

12.2.3 on a confidential basis, to its professional advisers;

12.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

12.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under this Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Supplier's confidentiality obligations under this Agreement; and

12.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any Public Sector Authority, any successor body to a Public Sector Authority or any company to which the Customer transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 13.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 12.

12.3 The Parties acknowledge that, except for any information which is exempt from disclosure in

accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to this Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 12.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise this Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

### **13 Freedom of Information**

- 13.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 13.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 13.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 13.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 13.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 13.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the *Goods* or *Services* (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 13.3 Notwithstanding any other provision in this Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the *Goods* or *Services* is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

### **14 Protection of Personal Data and Security of Data**

- 14.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the GDPR and both Parties shall duly observe all their obligations under the GDPR which arise in connection with this Agreement.
- 14.2 Notwithstanding the general obligation in clause 14.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the GDPR) the Supplier shall:

- 14.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the GDPR;
  - 14.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the GDPR;
  - 14.2.3 promptly notify the Customer of:
    - (a) any breach of the security requirements of the Customer as referred to in clause 14.3; and
    - (b) any request for personal data; and
  - 14.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the GDPR.
- 14.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

## 15 Liability

- 15.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 15.2 Subject always to clauses 15.3 and 15.4:
- 15.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Agreement, the supply or failure to supply of the *Goods* or *Services*, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
  - 15.2.2 except in the case of claims arising under clauses 10.5 and 19.3, in no event shall the Supplier be liable to the Customer for any:
    - (a) loss of profits;
    - (b) loss of business;
    - (c) loss of revenue;
    - (d) loss of or damage to goodwill;
    - (e) loss of savings (whether anticipated or otherwise); and/or
    - (f) any indirect, special or consequential loss or damage.
- 15.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 15.3.1 death or personal injury caused by its negligence or that of its Staff;
  - 15.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
  - 15.3.3 any other matter which, by law, may not be excluded or limited.
- 15.4 The Supplier's liability under the indemnity in clause 10.5 and 19.3 shall be unlimited.

## 16 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate this Agreement by written notice to the other Party.

## 17 Termination

17.1 The Customer may terminate this Agreement to supply:

17.1.1 *Goods* in whole or in part before delivery or after delivery (where only parts of the *Goods* have been delivered) by written notice to the Supplier with immediate effect or;

17.1.2 *Services* at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the initial Agreement is less than 3 months in duration, then at least 10 Working Days) later than the date of serving the relevant notice;

if the Supplier:

17.1.3 (without prejudice to clause 17.1.7), is in material breach of any obligation under this Agreement which is not capable of remedy;

17.1.4 repeatedly breaches any of the terms and conditions of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Agreement;

17.1.5 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 calendar days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

17.1.6 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

17.1.7 breaches any of the provisions of clauses 8.2, 12, 13, 14 and 18;

17.1.8 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.8) in consequence of debt in any jurisdiction; or

17.1.9 fails to comply with legal obligations in the fields of environmental, social or labour law.

17.2 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 17.1.6 or any potential such change of control.

17.3 The Supplier may terminate this Agreement by written notice to the Customer if the Customer

has not paid any undisputed amounts within 90 days of them falling due.

- 17.4 Termination or expiry of this Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 4.2, 7.1, 7.2, 7.6, 7.7, 8, 10, 11.2, 13, 14, 15, 16, 17.5, 19.3, 20 and 21.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.5 Upon termination or expiry of this Agreement, the Supplier shall:
- 17.5.1 give all reasonable assistance to the Customer and any incoming supplier of the *Goods* or *Services*; and
  - 17.5.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## 18 Compliance

- 18.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under this Agreement.
- 18.2 The Supplier shall:
- 18.2.1 comply with the reasonable requirements of the Customer's security arrangements;
  - 18.2.2 comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 18.2.3 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
  - 18.2.4 perform its obligations under this Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
  - 18.2.5 take all reasonable steps to secure the observance of clause 18.2.2 and 18.2.4 by all Staff.
- 18.3 The Supplier shall supply the *Goods* and *Services* in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 18.4 *Goods* shall be packed and marked in a proper manner and in accordance with any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 18.4

## 19 Prevention of Fraud and Corruption

- 19.1 The Supplier and the Staff shall comply with the requirements of the Bribery Act 2010 at all times and shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.

- 19.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with this Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to this Agreement or any other contract with the Customer; the Customer may:
- 19.3.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the *Goods* or *Services* and any additional expenditure incurred by the Customer throughout the remainder of this Agreement; or
- 19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## 20 Dispute Resolution

- 20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 20.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## 21 General

- 21.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.
- 21.2 A person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3 This Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4 This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall



not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

- 21.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **22 Notices**

- 22.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 22.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 22.3 Notices under clauses 16 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.1.

## **23 Governing Law and Jurisdiction**

The validity, construction and performance of this Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.