

Contract Terms and Conditions

London Borough of Richmond upon Thames

21 July 2022



ANNEX 1: CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS & INTERPRETATION

- 1.1. Unless the context otherwise requires, capitalised expressions in this Contract shall bear the meanings set out in this clause 1.
- 1.2. In addition to the capitalised expressions defined in the Award Letter, the following capitalised expressions used in these terms and conditions shall, unless the context otherwise requires, bear the following meanings:
- “Charges”** means the charges set out in Annex 3 (*Charges & Payment Details*);
- “Commencement Date”** means the date set out in the Letter on which the Organisation shall commence the provision of the Services;
- “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; or (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Council”** means the Mayor and Burgesses of the [London Borough of Wandsworth/ The London Borough of Richmond upon Thames];
- “Council’s Representative”** means the appointed representative of the Council, whose name and contact details are set out in the Letter;
- “DPA”** means the Data Protection Act 2018 (as amended or superseded from time to time);
- “EIR”** means the Environmental Information Regulations 2004 (as amended or superseded from time to time) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such Regulations;
- “Expiry Date”** means the date indicated as such in the Letter;
- “FOIA”** means the Freedom of Information Act 2000 (as amended or superseded from time to time) and any subordinate legislation made under that Act, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to that Act;
- “Information”** has the meaning given under section 84 of the FOIA;
- “Letter”** means the letter in respect of this Contract issued by the Council and sent to the Organisation (and to which these terms and conditions are appended);
- “Organisation”** means the legal person named as the provider of the Services in the Letter;
- “Organisations Representative”** means the appointed representative of the Organisation, whose name and contact details are set out in the Letter;
- “Personal Data”** means personal data (as defined in the DPA) which is processed by the Organisation or any of its Staff on behalf of the Council pursuant to or in connection with this Contract;
- “Proposals”** means the Organisations proposals for the provision of the Services as set out in Annex 4;
- “Purchase Order Number”** means the Council’s unique number relation to the provision of the Services as set out in the Letter;
- “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 Organisation to the Council under the Contract as described in the Specification;
- “Specification”** means the specification for the Services (including as to quantity, description and quality) as set out in Annex 2;
- “Staff”** means all directors, officers, employees, agents, consultants and contractors of the Organisation and/or of any sub-contractor of the Organisation engaged in the performance of the Organisations obligations under the Contract;
- “Term”** means the term of the Contract as set out in the Letter;
- “VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- “Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for business in England.

- 1.3. In these terms and conditions, unless the context otherwise requires:
- 1.3.1. references to numbered clauses are references to the relevant clause in the terms and conditions set out in this Annex 1;
- 1.3.2. 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;
- 1.3.3. the headings to the clauses are for information only and do not affect the interpretation of the Contract;
- 1.3.4. 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
- 1.3.5. any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. THE CONTRACT

- 2.1. Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the parties in connection with its subject matter, and supersedes and extinguishes all prior representations, communications, promises, assurances, warranties, undertakings, negotiations and understandings (whether written or oral) concerning the subject matter of this Contract.
- 2.2. Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. In the event of any inconsistency between the provisions of this Annex 1 and the Letter or any of its Annexes, the inconsistency shall be resolved according to the following descending order of priority:
- 2.2.1. the main body of the Letter
- 2.2.2. Annex 1 (these terms and conditions);
- 2.2.3. Annex 2 (*Specification*);
- 2.2.4. Annex 3 (*Charges & Payment Details*);
- 2.2.5. Annex 4 (*Proposals*)
- For the avoidance of doubt, the Specification shall at all times have priority over the Proposals and the Organisation shall be obliged to comply with the Specification and provide the Services in accordance with the Specification.
- 2.3. The Parties shall be deemed to have entered into the Contract on the date stated on the duplicate of the Award Letter signed by the Organisation and returned to the Council, or, if such date has been omitted, the date on which the Organisation returned such signed duplicate of the Offer Letter to the Council.

3. TERM

- 3.1. The Contract shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 3.2 below or terminated in accordance with the terms and conditions of the Contract.
- 3.2. The Council may extend the Contract for a period of up to six (6) months by giving not less than three (3) months’ notice in writing to the Organisation prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.

4. SUPPLY OF SERVICES

- 4.1. In consideration of the Council’s agreement to pay the Charges, the Organisation shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of the Contract.
- 4.2. In supplying the Services, the Organisation shall:
- 4.2.1. co-operate with the Council in all matters relating to the Services and comply with all the Council’s instructions;
- 4.2.2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Organisations 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 Organisations obligations are fulfilled in accordance with the Contract;
- 4.2.4. ensure that the Services shall be provided in accordance with the Specification and conform with all descriptions and specifications set out in the Specification and, in so far as the Proposals set out standards higher than those in the Specification, the Proposals;
- 4.2.5. comply with all applicable legislation and any policies notified by the Council to the Organisation from time to time; and
- 4.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services (except where the Parties agree that the Council shall supply such items).
- 4.3. The Organisations Representative or other suitably qualified and authorised representative shall attend progress meetings with the Council’s Representative or otherwise authorised officers at the frequency and times specified by the Council and shall submit progress reports to the Council at the times and in the format specified by the Council.
- 4.4. The Organisation shall:
- 4.4.1. ensure that all Staff are vetted in accordance with any requirements set out in the Specification or good industry practice;
- 4.4.2. if requested, provide the Council with a list of the names (and any other relevant information) of all persons who may require admission to the Council’s premises in connection with the Contract; and
- 4.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.

5. CHARGES & PAYMENT

- 5.1. The Charges shall be the full and exclusive remuneration due to the Organisation in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Organisation directly or indirectly incurred in connection with the performance of the Services.
- 5.2. The Organisation shall invoice the Council in arrears at the frequency specified in Annex 3 (*Charges & Payment Details*). Each invoice shall include the Purchase Order Number and any other supporting information required by the Council to verify the accuracy of the invoice.
- 5.3. In consideration of the supply of the Services by the Organisation, the Council shall, subject to clause 5.5 below, pay the Organisation the amounts due to the Organisation by no later than thirty (30) calendar days after receipt of a valid and undisputed invoice complying with clause 5.2 above.

- 5.4. All amounts stated are exclusive of VAT, which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Organisation a sum equal to the VAT chargeable in respect of the Services.
- 5.5. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount and the Parties shall use the dispute resolution procedure set out in clause 16 (*Dispute Resolution*) to resolve the dispute. The Organisation shall not suspend the supply of the Services during the resolution of such dispute. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 16 (*Dispute Resolution*).
- 5.6. If payment of an undisputed amount is not made by the Council by the relevant due date, then the Organisation shall be entitled to interest on the amount due at the rate of two (2) per cent per annum above the base rate from time to time of the National Westminster Bank Plc from the due date until the date of payment. Interest shall be assessed from the date by which the late payment should have been made until the date on which the delayed payment is made. The Parties agree that this clause 5.6 provides the Organisation with a substantial remedy pursuant to sections 8 and 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

- 5.7. Where an index is specified in Annex 3 (the “**Index**”), the Charges specified in Annex 3 shall be adjusted on each anniversary of the Start Date by a proportion equivalent to the proportionate rise or fall between the Index prevailing for the month immediately before the Start Date and the Index prevailing for the month immediately before the relevant anniversary.

6. EQUIPMENT

- 6.1. Any equipment provided by the Council to the Organisation for the purposes of the Contract shall remain the property of the Council and shall be used by the Organisation and the Staff only for the purpose of carrying out the Contract and subject to the payment of any agreed fee. The Organisation shall promptly return such equipment to the Council on expiry or termination of the Contract. The Organisation shall reimburse the Council for any loss or damage to the Council’s equipment (other than deterioration resulting from normal use and fair wear and tear) caused by the Organisation or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Organisation or relevant Staff unless any defects in such equipment identified by the Organisation and communicated to the Council in writing (with photographic evidence thereof) within ten (10) Working Days of the Organisation having taken possession of such equipment.

7. ASSIGNMENT AND SUB-CONTRACTING

- 7.1. The Organisation shall not without the written consent of the Council assign, novate or in any way dispose of the benefit or the burden of the Contract or any part of the Contract. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.
- 7.2. The Organisation shall be permitted to sub-contract delivery of the services without requiring the consent of the Council. The Organisation shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 7.3. Where the Organisation enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Organisation to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 7.4. The Council may assign, novate, or otherwise dispose of its rights and obligations under the Contract with the consent of the Organisation provided that such assignment, novation or disposal shall not increase the burden of the Organisations obligations under the Contract.

8. INSURANCE & LIABILITY

- (The Organisations attention is drawn to the provisions of this clause)
- 8.1. During the term of the Contract, the Organisation shall maintain in force with a reputable insurer of good financial standing adequate insurance cover (including public and employers’ liability insurance) in respect of the liabilities that may arise under or in connection with the Contract, and shall, on the Council’s request, promptly produce both the insurance certificate giving details of cover and the receipt for the current year’s premium in respect of each insurance.

- 8.2.

Subject to clause 8.3 below, the Organisations total liability to the Council in respect of all defaults, claims, losses or damages howsoever caused, whether arising from the breach of the Contract, the supply of the Services (or failure thereof), misrepresentation (whether tortious or statutory), tort (including without limitation negligence), breach of statutory duty or otherwise shall be unlimited.

8.3.

Nothing in this Contract shall limit or exclude either Party’s liability for:

8.3.1.

death or personal injury caused by its negligence;

8.3.2.

fraud or fraudulent misrepresentation; or

8.3.3.

any other liability which cannot be limited or excluded by applicable law.

8.4.

Subject to clause 8.3 above, the Council shall not be liable to the Organisation, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:

8.4.1.

loss of profits;

8.4.2.

loss of sales or business;

8.4.3.

loss of agreements or contracts;

8.4.4.

loss of anticipated savings;

8.4.5.

loss of or damage to goodwill;

8.4.6.

loss of use or corruption of software, data or information; and

8.4.7.

any indirect or consequential loss.

8.5.

Subject to clause 8.3 above, the Council’s total liability to the Organisation, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be as follows:

8.5.1.

where the term is for a period less than a year, such liability shall be limited to the value of the Charges;

8.5.2.

where the term is for a period greater than a year, such liability shall be limited to the value of the average (i.e. mean) annual Charges (calculated by reference to the Charges in all successive twelve-month (12-month) periods that have elapsed since the date of this Contract) paid by the Council under this Contract.
9.

FORCE MAJEURE

9.1.

Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract 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 (2) months, either Party may terminate the Contract by written notice to the other Party.
10.

TERMINATION

10.1.

Either Party may terminate the Contract at any time by notice in writing to the other to take effect on any date falling at least six (6) months later than the date of service of the relevant notice.

10.2.

Without prejudice to any other right or remedy it might have, the Council may terminate the Contract by written notice to the Organisation with immediate effect if the Organisation:

10.2.1.

without prejudice to clause 10.2.6 below, is in material breach of any obligation under the Contract which is not capable of remedy;

10.2.2.

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

10.2.3.

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

10.2.4.

undergoes a change of control within the meaning of section 1124 of the Income and Corporation Taxes Act 2010;
- 10.2.5.

commits fraud in relation to this Contract, commits an offence under the Bribery Act 2010, or gives any reward, the receipt of which is an offence under section 117(2) of the Local Government Act 1972;

10.2.6.

breaches any of the provisions of clauses 4.4.1, 12 (Confidentiality), 13 (Freedom of Information) or 14 (Data Protection); or

10.2.7.

becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Organisation (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 Organisations assets or business, or if the Organisation makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 10.2.7) in consequence of debt in any jurisdiction.
- 10.3.

The Organisation shall notify the Council as soon as practicable of any change of control as referred to in clause 10.2.4 above or any potential such change of control.
- 10.4.

Where the Contract is terminated pursuant to clause 10.2 above, the Council shall be entitled to recover from the Organisation the amount of any loss suffered by it resulting from the termination, including the cost reasonably incurred by the Council in making other arrangements for the supply of the Services and any additional expenditure incurred by the Council as a result of termination of the Contract.
- 10.5.

Termination or expiry of the Contract 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 10 (Termination).
- 10.6.

Upon termination or expiry of the Contract, the Organisation shall:
- 10.6.1.

give all reasonable assistance to the Council and any incoming supplier of the Services; and

10.6.2.

return all requested documents, information and data to the Council as soon as reasonably practicable.
- 10.7.

Prior to termination or expiry of the Contract, the Organisation shall on receiving reasonable notice from the Council, supply employee liability information as defined in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or superseded). This shall apply regardless of the provisions of such Regulations as to when such employee liability information is to be supplied.
- 10.8.

For the avoidance of doubt, the following provisions of the Contract shall survive the expiry or earlier termination of the Contract without limit in point of time: clauses 8 (Insurance & Liability), 11 (Intellectual Property Rights), 12 (Confidentiality), 13 (Freedom of Information), 14 (Data Protection), 10.4 to 10.6 inclusive, 15 (Compliance), 16 (Dispute Resolution), 17 (Notices), 18 (Miscellaneous) and Annex 3 (Charges & Payment Details).

11.

INTELLECTUAL PROPERTY RIGHTS

11.1.

All intellectual property rights in any materials provided by the Council to the Organisation for the purposes of this Contract shall remain the property of the Council but the Council hereby grants the Organisation a royalty-free, non-exclusive and non-transferable licence to use such materials as required for the term of the Contract for the sole purpose of enabling the Organisation to perform its obligations under the Contract.

11.2.

All intellectual property rights in any materials provided by, created or developed by the Organisation pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Council. To the extent that any intellectual property rights in such materials vest in the Organisation by operation of law, the Organisation hereby assigns to the Council all its intellectual property rights (including without limitation all future rights immediately upon coming into existence) in such materials with full title guarantee and free from all third party rights.

11.3.

The Organisation hereby grants the Council a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use any intellectual property rights vested in or licensed to the Organisation on the date of the Contract (provided that the Organisation has given its prior consent, such consent not to be unreasonably withheld or delayed).

11.4.

The Organisation shall indemnify, and keep indemnified, the Council 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 Council as a result of or in connection with any claim made against the Council 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 Services, to the extent that the claim is attributable to the acts or omission of the Organisation or any Staff. The Organisations liability under the indemnity given in this clause 11.4 shall be unlimited.

12. CONFIDENTIALITY

- 12.1. Subject to clause 12.2 below, the Organisation shall treat all Confidential Information it receives from the Council as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the Council. The Organisation shall fully indemnify and keep the Council fully indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Organisation of this clause 12.1.
- 12.2. Notwithstanding clause 12.1 above, a Party may disclose Confidential Information which it receives from the other Party where disclosure is required by applicable law or by a court of competent jurisdiction or by the FOIA or EIR, or where disclosure is on a need-to-know basis for the sole purpose of enabling the Organisations performance of its obligations under this Contract.

13. FREEDOM OF INFORMATION

- 13.1. The Organisation acknowledges and accepts that the Council is subject to the requirements of the FOIA and the EIR and that the Council may be required under the FOIA and the EIR to disclose Information concerning the Organisation or the Services (including commercially sensitive information) without consulting or obtaining consent from the Organisation. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Organisation advance notice, or failing that, to draw the disclosure to the Organisations attention after any such disclosure.
- 13.2. Notwithstanding any other provision in the Contract, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Organisation or the Services is exempt from disclosure in accordance with the FOIA or the EIR.

14. DATA PROTECTION

- 14.1. The Organisation shall (and shall procure that its Staff shall) comply with any notification requirements under DPA and both Parties will duly observe all their obligations under the DPA arising in connection with the Contract.
- 14.2. Notwithstanding the general obligation in clause 14.1 above, where the Organisation is processing Personal Data for the Council, the Organisation 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 Seventh Data Protection Principle in Schedule 1 to the DPA;
- 14.2.2. provide the Council with such information as the Council may reasonably require to satisfy itself that the Organisation is complying with its obligations under the DPA; and
- 14.2.3. ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA; and
- 14.2.4. not process or otherwise transfer any Personal Data outside of the European Economic Area.

15. ORGANISATION'S COMPLIANCE

- 15.1. The Organisation shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 15.2. The Organisation shall:
- 15.2.1. comply with all the Council's health and safety measures while on the Council's premises; and

- 15.2.2. comply with all applicable legislation relating to health and safety; and
- 15.2.3. notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

15.3. The Organisation shall:

- 15.3.1. perform its obligations under the Contract in accordance with all applicable equality legislation and the Council's equality and diversity policy from time to time, and shall take all reasonable steps to secure the observance of this clause 15.3 by all its Staff.
- 15.3.2. supply the Services in accordance with the Council's environmental policy as provided to the Organisation from time to time.
- 15.3.3. comply (and shall procure that its Staff shall comply) with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including without limitation the Bribery Act 2010;
- 15.3.4. not (and shall procure that its Staff do not) directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity.
- 15.3.5. not (and shall procure that its Staff do not) directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract.

15.4. To the extent that the Organisation is undertaking a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006, the Organisation shall comply with the provisions of such Act, as well as the Council's Inter-Agency Guidelines.

15.5. To the extent that the Organisations performance of the Services involves regular contact with children, the Organisation shall ensure that all its Staff act in accordance with the Council's Inter-Agency Guidelines, have regard to the need to safeguard and promote children's welfare, and have regard to the Secretary of State's statutory guidance on making Arrangements to Safeguard and Promote the Welfare of Children under section 11 of the Children Act 2004, as well as any further guidance issued by the Secretary of State pursuant to section 11 of the Children Act 2004.

15.6. The Organisation shall notify the Council immediately in the event of any suspected breach by the Organisation or its Staff of the obligations set out in this clause 15 (*Organisations Compliance*).

16. DISPUTE RESOLUTION

- 16.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 16.2. If the dispute cannot be resolved by the Parties within one (1) month of being escalated as referred to in clause 16.1 above, the dispute may by Contract 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.
- 16.3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

17. NOTICES

17.1. Any notice to be given under the Contract shall be in writing and may be served by personal hand delivery, first-class recorded post or, subject to clause 17.3 below, by email to the email address of the relevant Party set out in the Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 17 (*Notices*).

- 17.2. Notices served in accordance with clause 17.1 above shall be deemed served on the day of delivery provided such delivery is before 5.00pm on a Working Day; otherwise, delivery shall be deemed to occur on the next Working Day. No email shall be deemed delivered if any error message in respect of such email is received by the sender.
- 17.3. Notices under clauses 9 (*Force Majeure*) and 10 (*Termination*) may be served by email only if the original notice is then sent in hard-copy form to the recipient by personal or postal delivery in the manner set out in clause 17.1 above.
- 18. MISCELLANEOUS**
- 18.1. 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 the Contract, and that the Contract is executed by its duly authorised representative.
- 18.2. A person who is not a party to the Contract 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.
- 18.3. The Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 18.4. Any waiver or relaxation either partly or wholly of any of the terms and conditions of the Contract 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 Contract.

- 18.5. The Contract 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 the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 18.6. Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, 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.
- 18.7. If any provision of the Contract 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 the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.
- 18.8. The validity, construction and performance of the Contract, 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.