

Model Terms and Conditions: Contracts for Goods

Local Authorities should consider these model terms and conditions in consultation with the accompanying Guidance issued by the Office of Government Commerce. These terms and conditions are specific to contracts for goods. They may need to be amended depending on the specific nature of the goods to be provided or where the contract being let is for the provision of goods and services. When considering any amendments and the overall suitability of these terms for any particular contract, Local Authorities should seek advice from their legal department. Clauses which require particularly careful consideration before they are used have been italicised. In addition, some clauses have been highlighted in red where special reference to the accompanying guidance should be made to ascertain whether they should be included, alternative wording used or before any amendments are made.

Date [2006]

[Authority Logo]

(1) [THE AUTHORITY]

-and-

(2) [THE CONTRACTOR]

AGREEMENT

relating to the purchase of [Goods]

[Borough Solicitor]

[Local Authority]

[Address]

[Address]

[Lawyer Ref]

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THIS AGREEMENT is made on [date in manuscript]

BETWEEN

(1) [NAME OF LOCAL AUTHORITY] of [ADDRESS OF LOCAL AUTHORITY] (the “Authority”); and

(2) [CONTRACTOR] LIMITED (company registered number []) whose registered office is at [] (the “Contractor”).

RECITALS:

(A) The Authority [recite Committee Approval/Delegation of powers to relevant officer]

(B) The Authority and the Contractor have agreed that the Contractor shall provide and the Authority shall co-operate with it in providing the Goods in the manner and upon the terms hereinafter set out.

(C) [Recite brief details of Tender process/OJEU notice number etc.]

OPERATIVE PROVISIONS:

Part 1 General Provisions

1. Definitions and Interpretations

1.1 In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

“1976 Act” means the Race Relations Act 1976

“Agreement” means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, [the Contractor’s Tender] [and any other documents (or parts thereof) specified by the Authority].

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“Approval” and “Approved” means the written consent of the Contract Manager.

“Authority Equipment” means the equipment owned by the Authority as set out in the Invitation to Tender.

“Authority Property” means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement.

“Commencement Date” means [the date of this Agreement] [] 200[].

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, [Goods/Services], developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“Contract Manager” means the individual from time-to-time appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf.

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“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority.

“Contractor’s Representative” means the individual from time-to-time authorised to act on behalf of the Contractor for the purposes of the Agreement.

“Criminal Records Bureau” means the bureau established pursuant to Part V of the Police Act 1997.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Extension” means the extension of the duration of the Agreement agreed in accordance with clause 46.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Contractor’s organisation or within any sub-contractor’s organisation.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would

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affect or relate to a comparable supply of goods of the same or a similar nature to the supply of the Goods.

“Good Industry Practice” means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means any such goods as are to be supplied by the Contractor (or by the Contractor’s Sub-Contractor) under the Agreement as specified in the Specification.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Invitation to Tender” means the Authority’s invitation to contractors to submit tenders for the supply of the Goods dated [].

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

“Month” means calendar month.

“Party” means a party to this Agreement and “Parties” shall be construed accordingly.

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“Premises” means the location where the Goods are to be delivered as specified in the Invitation to Tender.

“Price” means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 24.

“Pricing Schedule” means the Schedule containing details of the Price.

“Quality Standards” means the quality standards relating to the Goods published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, with which a skilled and experienced operator engaged in the same type of industry or business as the Contractor’s would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party contractor appointed by the Authority from time to time, to provide any goods which are substantially similar to any of the Goods, and which the Authority receives in substitution for any of the Goods following the expiry, termination or partial termination of this Agreement, whether those goods are provided by the Authority internally and/or by any third Party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

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“Schedule” means a schedule attached to the Agreement.

“Specification” means the description of the Goods to be provided under the Agreement and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of goods of the same or a similar nature to the supply of the Goods.

“Staff” means all persons employed by the Contractor to perform the Agreement together with the Contractor's servants, agents and sub-contractors used in the performance of the Agreement.

“Tax” means Value Added Tax

“Term” means the period from the Commencement Date to the expiry date or such earlier date of termination or partial termination of the agreement in accordance with clause 2.1 of the Agreement.

“Tender” means the Contractor's response to the Invitation to Tender (as subsequently clarified in []).

“Variation” has the meaning given to it in 42.1

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

1.2 Interpretation

(a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;

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- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) 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 assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2 Authority’s Obligations

- 2.1 Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Contractor.

[Insert further clauses as required for the delivery of the Goods]

3 Term

3.1 The Agreement shall take effect on the Commencement Date and shall expire automatically on [the date specified in the Specification] [..... 20--], unless it is otherwise terminated in accordance with this Agreement, or otherwise lawfully terminated.

3.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 46. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) until the expiry of the period specified in accordance with clause 46.

4 Entire Agreement

4.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

4.2 In the event of and only to the extent of any conflict between the body of the Agreement, the Specification, Invitation to Tender, [Contractor's Tender] [and other documents referred to or attached to the Agreement], the conflict shall be resolved in accordance with the following order of precedence

(1) the body of the Agreement shall prevail over;

(2) the Schedules;

(3) the Invitation to Tender;

[(4) the Contractor's Tender;]

[(5) any other document referred to in this Agreement.]

Unless expressly agreed in writing by the Authority, a document varied pursuant to clause 42 shall not take higher precedence than specified here.

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- 4.3 This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

5 Scope of Agreement

- 5.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor.

6 Notices

- 6.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

- 6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

- 6.3 For the purposes of clause 6.2, the address of each Party shall be:

(a) For the Authority:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

Email:

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(b) For the Contractor:
[]
[Address:]
[]
For the attention of:
Tel:
Fax:
Email:

6.4 Either Party may change its address for service by serving a notice in accordance with this clause.

7 Inspection of Premises

7.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submission of its tender and to have made appropriate enquiries so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

8 Mistakes in Information

8.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

9 Conflicts of Interest

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where, in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

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9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of [two] years after its termination or expiry.

10 Fraud

10.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

11 Contractor's Status (Principal)

11.1 In carrying out its obligations under the Agreement, the Contractor shall be acting as principal and not as the agent of the Authority.

11.2 Accordingly:

- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- (b) nothing in the Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Authority, the Authority's employees, servants or agents.

Part 2 The Goods

12 The Specification

12.1 The quantity, quality and description of the Goods shall be as specified by the Authority in the Specification Schedule.

13 The Goods

13.1 If required by the Authority, samples of Goods shall be submitted by the Contractor to the Authority for evaluation and approval at the Contractor's cost and expense and all subsequent deliveries of the Goods shall be equal in quality to or better than approved samples.

13.2 The Goods shall be fully compatible with the Authority's Equipment.

13.3 The Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the carrying out of all of the Contractor's obligations under this Agreement.

13.4 The Contractor must undertake its obligation in the Agreement in accordance with the Law.

14 Delivery

14.1 The Goods shall be delivered at the times and dates specified in the Specification.

14.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

14.3 Except where otherwise provided in the Agreement, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's

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suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.

- 14.4 Where any access to the Authority's Premises is necessary in connection with delivery or installation, the Contractor and the Contractor's sub-contractors or suppliers shall at all times comply with the reasonable requirements of the Authority's security procedures.
- 14.5 Time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Authority (at the Authority's option) to release itself from any obligation to accept and pay for the Goods and/or terminate all or part of the Agreement, in either case without prejudice to other rights and remedies.
- 14.6 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Contractor to remove them within 5 Working Days of receipt by the Contractor of such notice and to refund to the Authority any expenses incurred by the Authority as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Authority shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by the Authority, as appropriate.
- 14.7 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- 14.8 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Agreement without further liability to the Authority.

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14.9 If the Authority is affected by circumstances of Force Majeure, the Authority shall be entitled to suspend partially or totally the date or dates for delivery of the Goods until such time as the circumstances of Force Majeure have ceased and such suspension shall not give rise to any claim by the Contractor against the Authority nor entitle the Contractor to terminate the Agreement. For the avoidance of doubt where the Contractor is subject to Force Majeure clause 56 shall apply.

15 Property and Risk

15.1 Property and risk in the Goods shall without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause 17 hereof) pass to the Authority at the time of acceptance of delivery.

16 Damage in Transit

16.1 On dispatch of any consignment of the Goods the Contractor shall send to the Authority at the Premises an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to the Authority, the Authority shall elect:

(a) to reject the consignment; or

(b) require the Contractor free of charge to the Authority, to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in the Agreement provided that:

(i) in the case of damage to such Goods in transit the Authority shall within 25 Working Days of delivery give notice to the Contractor that the Goods have been damaged;

(ii) in the case of non-delivery the Authority shall (provided that the Authority has been advised in writing of the dispatch of the Goods) within 10 Working Days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

17 Inspection, Rejection and Guarantee

- 17.1 The Contractor shall permit the Authority or authorised representatives to make any inspections or tests which may reasonably be required and the Contractor shall afford all reasonable facilities and assistance free of charge at the Contractor's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests of the Goods or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods.
- 17.2 The Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods concerned. If the Authority shall reject any of the Goods pursuant to this clause the Authority shall be entitled (without prejudice to other rights and remedies) either:
- (a) to have the Goods concerned as quickly as possible and in any event within 5 Working Days either repaired by the Contractor or (as the Authority shall elect) replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - (b) to treat the Agreement as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price incurred by the Authority in obtaining replacement goods in replacement provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- 17.3 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
- 17.4 Unless otherwise required in the Authority's Invitation to Tender, the Contractor shall guarantee the Goods for the shorter of 12 Months from putting into service or

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18 Months from delivery. If the Authority shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority.

17.5 Any Goods rejected or returned by the Authority as described in clause 17.2 shall be returned to the Contractor at the Contractor's risk and expense.

18 Labelling and Packaging

18.1 The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

19 Training

19.1 Where indicated in the Invitation to Tender the Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods, such instruction to be in accordance with the training specified in the Specification.

20 Manner of Carrying out the Installation Work

20.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Authority's Premises without obtaining prior Approval.

20.2 Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and Contractor's suppliers as are necessary to enable the performance of the Agreement concurrently with the execution of work

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by others. The Contractor shall co-operate with such others as the Authority may reasonably require.

20.3 The Authority shall have the right at any time during the progress of the Agreement to order in writing:

- (a) the removal from the Authority's Premises of any materials which in the opinion of the Authority are either hazardous, noxious or not in accordance with the Agreement; and/or
- (b) the substitution of proper and suitable materials; and/or
- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods which, in respect of material or workmanship, is not in the opinion of the Authority in accordance with the Agreement.

20.4 On completion of the installation works the Contractor shall remove the Contractor's plant, equipment and unused materials and shall clear away from the Authority's Premises all rubbish arising out of the Agreement and leave the Authority's Premises in a neat and tidy condition.

Part 3 Payment and Contract Price

21 Price

21.1 In consideration of the performance of the Contractor's obligations under the Agreement by the Contractor, the Authority shall pay the Price in accordance with clause 22.

21.2 In the event that the cost to the Contractor of performing its obligations under the Agreement increases or decreases as a result of a change of Law within the scope of clause 26, the provisions of clause 26 shall apply.

21.3 The Authority shall, on the production of a valid Tax invoice, pay the Contractor, in addition to the Price, a sum equal to the Tax chargeable on the value of the Goods provided in accordance with the Agreement.

22 Payment and Tax

- 22.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed and Goods supplied to the satisfaction of the Authority.
- 22.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Goods and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.
- 22.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 25 Working Days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 22.4 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 22.5 The Authority may reduce payment in respect of any Goods which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 22.6 The Contractor shall not suspend the supply of the Goods or related services unless the Contractor is entitled to terminate the Agreement under clause 51.3 for failure to pay undisputed sum.

23 Recovery of Sums Due

- 23.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time

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may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.

23.2 Any overpayment by the Authority to the Contractor, whether of the Price or of Tax, shall be a sum of money recoverable by the Authority from the Contractor pursuant to clause 23.1 above.

23.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

24 Price adjustment on Extension

24.1 The Price shall be firm for the Term. In the event of an extension of the Term being considered by the Authority pursuant to Clause 46, the Authority will (as part of such consideration) review the Price with the Contractor in the 6 months period prior to the expiry of the Agreement.

24.2 If a Price variation is agreed with the Authority as part of its consideration relating to an extension of the Term, the revised Price will take effect from the first day of any extension of the Term pursuant to Clause 46 and shall remain firm for the period of the extension of the Term.

24.3 Any increase in the Price pursuant to Clauses 24.1 and 24.2 above will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a Schedule to this Agreement) between the Commencement Date and the date [6 months] before the end of the Term.

25 Euro

25.1 Any requirement of Law to account for the Goods in euro (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

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25.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 25.1.

26 Change of Law

26.1 The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the terms of this Agreement nor be entitled to an increase in the Price as the result of:

(a) a General Change in Law; or

(b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise..

26.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 26.1), the Contractor shall notify the Authority of the likely effects of that change, including:

(a) whether any Variation is required to the Goods, the Price or this Agreement; and

(b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

26.3 As soon as practicable after any notification in accordance with clause 26.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

(a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;

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- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - (c) giving evidence as to how the Specific Change in Law has the Price; and
 - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.
- 26.4 Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 26 shall be implemented in accordance with clause 42.

Part 4 Statutory Obligations and Regulations

27 Prevention of Corruption

- 27.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as 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 any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- 27.2 The Contractor warrants that it has not paid commission or has agreed to be pay commission to any employee or representative of the Authority in connection with this Agreement.
- 27.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 27.1 or 27.2 in relation to this or any other contract with the Authority, the Authority has the right to:
- (a) terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost

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reasonably incurred by the Authority of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Term; or

- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Agreement has been terminated.

28 Discrimination

28.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

28.2 The Contractor shall take all reasonable steps to secure the observance of clause 28.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

29 The Contracts (Rights of Third Parties) Act 1999

29.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 29. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

30 Environmental Requirements

30.1 The Contractor shall, when working on the Authority's Premises, perform the Agreement in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

31 Health and Safety

31.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Agreement.

31.2 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

31.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Agreement on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

31.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

31.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

Part 5 - Protection of Information

32 Data Protection Act

32.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

32.2 Notwithstanding the general obligation in clause 32.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Contractor shall 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; and

- a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
- b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 32.2; and
- c) ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

32.3 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

33 Confidentiality

33.1 Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

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- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

- 33.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:-
 - (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
 - (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

- 33.3 [Where it is considered necessary in the opinion of the Authority, the Contractor shall and shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.] [The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Agreement.]

- 33.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Agreement.

- 33.5 The provisions of clauses 33.1 to 33.4 shall not apply to any Confidential Information received by one Party from the other:-
 - (a) which is or becomes public knowledge (otherwise than by breach of this clause);
 - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

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- (c) which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) 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 FOIA or the Environmental Information Regulations pursuant to clause 34.

33.6 Nothing in this clause shall prevent the Authority:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Authority's accounts; or
 - (ii) any examination pursuant to Section 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - (b) disclosing any Confidential Information obtained from the Contractor:-
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third Party which is not part of any government department or any Contracting Authority; or
 - (ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;
- provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose

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concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

33.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement 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.

34 Freedom of Information

34.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

34.2 The Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within [2] Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [5] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

34.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

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(b) is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

34.4 The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) , be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-

(a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

34.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

34.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 34.4.

35 Publicity and the Media

35.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party.

35.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 35.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 35.1 by its sub-contractors.

36 Security

36.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

37 Contractor's Staff

37.1 The Authority reserves the right under this Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:

(a) any member of the Staff; or

(b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the opinion of the Authority, inappropriate.

37.2 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Authority may reasonably require.

37.3 The Contractor's Staff, engaged within the boundaries of an Authority establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

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37.4 The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.

37.5 *The Contractor shall procure that in respect of all potential Staff or persons engaged to deliver the Goods (pursuant to clause 14), undertake training (pursuant to clause 19) or undertake installation work (pursuant to clause 20) (each a "Named Employee") before a Named Employee begins to attend any Authority premises:*

(a) each Named Employee is questioned as to whether he or she has any convictions; and

(b) the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each Named Employee made with the Criminal Records Bureau in accordance with Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:

(i) a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children; and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).; and

(c) a copy of the results of such check are sent to the Authority.

37.7 *The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check, is employed or engaged by the Contractor or on the Contractor's behalf without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).*

37.8 *The Contractor shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become*

known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services).

38 Intellectual Property Rights

38.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Agreement shall belong to the Authority,

and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

38.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third Party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third Party providing services to the Authority, and shall be granted at no cost to the Authority.

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- 38.3 It is a condition of the Agreement that the materials supplied or licensed by the Contractor will not infringe any Intellectual Property Rights of any third Party and the Contractor shall during and after the Term on written demand indemnify and shall keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim refers to:
- (a) designs furnished by the Authority;
 - (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.
- 38.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 38.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Right in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Authority; and
 - (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 38.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and

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expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 39(a) and (b),

38.6 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of the Agreement.

38.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

(a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Goods or to the substitute Goods; or

(b) procure a licence to use and provide the Goods, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

38.8 At the termination of the Agreement the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

38.9 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

39 Audit and the Audit Commission

39.1 The Contractor shall keep and maintain until [six years] after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives or the Audit Commission such access to those records as may be required by the Authority or the Audit Commission in connection with the Agreement.