



[Drafting Note: Suggested that this is printed on ACE Letterhead]

[Insert Supplier name]

[Insert Supplier address]

Attn: [Insert Supplier contact name]

By email to: [Insert Supplier contact email address]

Date: [Insert date]

Your ref: [Insert Supplier's reference, if any]

Our ref: [Insert ACE's reference]

Dear Sirs,

**Order Form for purchase of Goods and/or Services**

[Insert full name of Supplier] (the "Supplier") is engaged in the business of offering the Goods and/or Services (as defined below) and has considerable skill, knowledge and experience in that field.

In reliance on that skill, knowledge and experience, Arts Council England ("ACE") wishes to engage the Supplier to provide the Goods and/or Services and the Supplier has agreed to provide the Goods and/or Services in accordance with the provisions of this Agreement.

This Agreement shall be made up of the commercial terms set out in the table below (the "Commercial Terms") and the general terms and conditions appended to this Order Form (the "General Conditions").

**Commercial Terms**

No.	Subject	Detail
1	Supplier Details	[INSERT COMPANY NAME] (Company number [INSERT COMPANY NUMBER]) whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]
2	Term	Commencement Date: [INSERT] Expiry Date: [INSERT]
3	Goods and/or Services to be performed	[Insert details of the Goods and/or Services to be delivered by the Supplier. This should include and specific requirements which ACE has agreed that the Supplier will meet. It may be easiest to attach the proposal/specification from the Supplier to this Order Form and add the words "The goods/services detailed in the attached proposal/specification" into this box.]

4	Delivery details	<b>[Insert any specific details required for delivery of the goods/services e.g. the delivery address, date of delivery, packaging instructions and any additional delivery instructions. If not required then write “not applicable”.]</b>
5	Charges	<b>[Insert details of the Charges which have been agreed with the Supplier. If multiple invoices are to be issued make sure it is clear when these may be issued and what they should cover. It may be helpful to attach the Supplier’s proposal/specification to this Order Form and add the words “The charges detailed in the attached proposal/specification” into this box.]</b>
6	Contract Managers	ACE: <b>[Insert name and contact details of ACE’s Contract Manager]</b>  Supplier: <b>[Insert name and contact details of Supplier’s Contract Manager]</b>
7	Additional Terms	<b>[Insert any additional terms which have been agreed with the Supplier including any modification of the General Conditions. If any term of the General Conditions is to be amended you should seek confirmation from legal that this is acceptable.]</b>

Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the General Conditions. In the event of any conflict between this Order Form and the General Conditions, this Order Form shall prevail. Please do not attach any terms and conditions of your own in response to this Order Form as they will not be accepted by ACE and may delay the conclusion of the Agreement.

Please confirm your acceptance of the award of this Agreement by signing and returning the enclosed copy of this letter to **[Insert name]** at the above address within 14 (fourteen) calendar days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

We will provide you with a PO Number in respect of the Charges within 15 (fifteen) Working Days of receipt of your signed copy of this letter accepting the award of this Agreement. You should ensure that this is referred to in any invoices that you send to us.

Yours faithfully,

Signed for and on behalf of The Arts Council of England trading as Arts Council England

Name: **[Insert name]**

**[Insert job title]**

Signature:

Date:

We accept the terms set out in this Order Form, including the Commercial Terms and the General Conditions.

Signed for and on behalf of **[Insert full name of Supplier]**

Name: **[Insert name]**

**[Insert job title]**

Signature:

Date:

**Arts Council England Terms and Conditions of Contract for Goods and/or Services**

**1 INTERPRETATION**

1.1 In these terms and conditions:

“ACE” means The Arts Council of England trading as Arts Council England (registered charity number 1036733);

“Agreement” means the contract between (i) ACE and (ii) the Supplier constituted by the Supplier’s countersignature of the Order Form and includes the Order Form, these General Conditions and any documentation appended to the Order Form;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Charges” means the charges for the Goods and/or Services as specified in the Order Form;

“Confidential Information” means:

- (a) all confidential information and data which is acquired from or made available

(directly or indirectly) by the Disclosing Party or the Disclosing Party’s representatives however conveyed or presented, including but not limited to any information or document relating to the Disclosing Party’s business, affairs, operations, budgets, policies, processes, initiatives, plans, product information, pricing information, technical or commercial know-how, trade secrets, specifications, strategies, inventions, designs, software, market opportunities, personnel, customers or suppliers (whether relating to this Agreement or otherwise) either orally, in writing, or in whatever form obtained or maintained;

- (b) any information or analysis derived from the Confidential Information;
- (c) anything marked as confidential and any other information notified by or on behalf of the Disclosing Party to the Receiving Party as being confidential;
- (d) the existence and terms of this Agreement and of any subsequent agreement entered into in relation to this Agreement;
- (e) the fact that discussions and negotiations are taking place concerning this Agreement and the status

	of those discussions and negotiations; and		
	(f) any copy of any of the information described in (a), (b), (c), (d) or (e) above, which shall be deemed to become Confidential Information when it is made. For the purposes of this definition, a copy shall include, without limitation, any notes or recordings of the information described in (a), (b), (c), (d) or (e) above (howsoever made);		Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;
"Contact Manager"	means the individual notified by the Supplier and ACE respectively as being the contact point for the other Party for matters relating to this Agreement or such replacement as may be notified by such Party from time to time. At the commencement of this Agreement the individuals identified in the Order Form shall be the Contract Managers for each Party;	"Data Subject"	shall have the same meaning as in the Data Protection Legislation;
"Data Protection Legislation"	means, for the periods in which they are in force, the European Union Data Protection Directive (95/46/EC), all laws giving effect or purporting to give effect to the European Union Data Protection Directive (95/46/EC), the GDPR or otherwise relating to Data Protection, including the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and	"Date of Delivery"	means that date by which the Goods (if applicable) must be Delivered to ACE, as specified in the Order Form;
		"Deliver"	means hand over the Goods (if applicable) to ACE at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangement agreed in accordance with clause 6. "Delivered" and "Delivery" shall be construed accordingly;
		"Disclosing Party"	means a Party that makes a disclosure of Confidential Information to another Party;
		"Dispute"	means any dispute, conflict or disagreement arising out of or in connection with this Agreement;
		"EIRs"	means the Environmental Information Regulations 2004;
		"Expiry Date"	means the date for expiry of the Agreement as set out in the Order Form;
		"FOIA"	means the Freedom of Information Act 2000;
		"Force Majeure Event"	shall be limited to one or more of the following events: hurricanes, tempest, acts of state or public enemy, wars, revolutions, uprisings, hostilities, civil

	disturbances, riots, civil war, insurrection and invasion. For the avoidance of doubt, strikes, lockouts and shutdowns of a Party (or of any person engaged by any of them) shall not be a force majeure event for that Party;		rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, including the "look and feel" of any websites;
"GDPR"	means:		
	(a) the General Data Protection Regulations (Regulation (EU) 2016/679); or	"Limit of Liability"	means £250,000 (two hundred and fifty thousand pounds) per claim and not more than £500,000 (five hundred thousand pounds) in total during the Term;
	(g) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679);	"Order Form"	means the document from ACE to the Supplier printed above these terms and conditions;
"General Conditions"	means these terms and conditions;	"Party"	means the Supplier or ACE (as appropriate) and "Parties" shall mean both of them;
"Good Industry Practice"	means all relevant practices and professional standards that would be expected of a well-managed, expert service provider performing services substantially similar to the Services or goods substantially similar to the Goods to customers of a substantially similar size and nature as ACE;	"Personal Data"	has the meaning given to this term by the Data Protection Legislation;
		"Personal Data Breach"	shall have the same meaning as in the Data Protection Legislation;
"Goods"	means the goods to be supplied by the Supplier to ACE, under the Agreement (if any);	"Public Procurement Termination Event"	ACE exercises its right to terminate the Agreement in one or more of the circumstances described in either regulation 73(1) of the Public Contracts Regulations 2015) (as amended from time to time), or equivalent provisions implementing Directive 2014/23/EU in England, Wales & Northern Ireland (as amended from time to time);
"Information"	has the meaning given under section 84 of the FOIA;		
"Intellectual Property Rights"	means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and	"Purchase Order"	means ACE's unique number relating to the supply of the Goods and/or Services as detailed in the purchase order to be provided to the Supplier following receipt by ACE of the Supplier's countersigned copy of

	the Order Form;		the Order Form to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
"Receiving Party"	means a Party to which a disclosure of Confidential Information is made by another Party;		
"Request for Information"	has the meaning set out in the FOIA or the EIRs as relevant (where the meaning set out for the term "request" shall apply);	"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Services"	means the services to be supplied by the Supplier to ACE under the Agreement (if any);	"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.
"Specification"	means the specification for the Goods and/or Services (including as to quantity, description and quality) as specified in the Order Form or any proposal/specification appended to the Order Form which is referred to in that Order Form;	1.2	In these terms and conditions, unless the context otherwise requires:
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;	(a)	references to numbered clauses are references to the relevant clause in these terms and conditions;
"Staff Vetting Procedures"	means vetting procedures that accord with Good Industry Practice or, where requested by ACE, ACE's procedures for the vetting of personnel as provided to the Supplier from time to time;	(b)	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;
"Supplier"	means the person named as Supplier in the Order Form;	(c)	the headings to the clauses of these General Conditions are for information only and do not affect the interpretation of the Agreement;
"Supplier Dispute"	means any disputes, claims, litigation, mediation or arbitration whether threatened or pending in relation to any incident involving the Supplier's, or another party's, provision of the Goods and/or Services;	(d)	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
"Term"	means the period from the start date of the Agreement set out in	(e)	the word 'including' shall be understood as meaning 'including without limitation'.
		<b>2</b>	<b>BASIS OF AGREEMENT</b>
		2.1	The Order Form constitutes an offer by ACE to purchase the Goods and/or Services subject to and in accordance with the terms and conditions of the Agreement.

2.2 The offer comprised in the Order Form shall be deemed to be accepted by the Supplier on receipt by ACE of a copy of the Order Form countersigned by the Supplier within 14 days of the date of the Order Form.

### 3 SUPPLY OF GOODS AND SERVICES

3.1 In consideration of ACE's agreement to pay the Charges, the Supplier shall supply the Goods and/or Services to ACE for the Term subject to and in accordance with the terms and conditions of the Agreement.

3.2 In supplying the Goods and/or Services the Supplier shall:

- (a) co-operate with ACE in all matters relating to the supply of Goods and/or Services and comply with all ACE's instructions using reasonable endeavours to promote ACE's interests; and
- (b) comply with all applicable laws.

3.3 In supplying the Services, the Supplier shall:

- (a) perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
- (b) use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
- (c) ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- (d) not do or allow anything to be done that would, or would be likely to, bring ACE into disrepute or adversely affect its reputation in any way; and

- (e) provide all equipment, tools and vehicles and other items as are required to provide the Services.

3.4 The Supplier shall supply the Goods in accordance with any Specification. The Supplier warrants, represents, undertakes and guarantees that Goods supplied under the Agreement shall:

- (a) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 (twelve) months after Delivery;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (c) conform with the specifications (including any Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
- (d) be free from design defects; and
- (e) be fit for any purpose held out by the Supplier or made known to the Supplier by ACE expressly or by implication, and in this respect ACE relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by ACE of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause.

### 4 TERM

4.1 The Agreement shall take effect on the date specified in the Order Form and shall expire

on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.

4.2 ACE may extend the Agreement for a period of up to 6 months by giving not less than 10 (ten) Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

## 5 CANCELLATION

5.1 ACE shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to ACE. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, ACE shall pay such Charges or that part of the Charges for Goods which have been Delivered to ACE or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt ACE shall not be liable for any loss of anticipated profits or any consequential loss.

## 6 DELIVERY

6.1 The Supplier shall Deliver the Goods to ACE on or by the Date of Delivery. Unless otherwise agreed in writing by ACE, Delivery shall be on the date and to the address specified in the Order Form. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and ACE has signed for the Delivery.

6.2 Any access to ACE's premises and any labour and equipment that may be provided by ACE in connection with Delivery of the Goods shall be provided without acceptance by ACE of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that

such loss or damage is not attributable to the negligence or other wrongful act of ACE or its servant or agent. The Supplier shall indemnify ACE in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which ACE may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

6.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.

6.4 Unless otherwise stipulated by ACE in the Order Form, Deliveries shall only be accepted by ACE on Working Days and during normal business hours.

6.5 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:

- (a) to terminate the Agreement;
- (b) request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by ACE;
- (c) to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and ACE shall be entitled to a full refund on those

- Goods or part of Goods duly returned;
- (e) to buy the same or similar Goods from another supplier; and
- (f) to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.
- 7 PROPERTY AND GUARANTEE OF TITLE**
- 7.1 Without prejudice to any other rights or remedies of ACE, title and risk in the Goods shall pass to ACE when Delivery of the Goods is complete (including off-loading and stacking).
- 7.2 The Supplier warrants that:
- (a) it has full clear and unencumbered title to all the Goods;
- (b) at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to ACE; and
- (c) on Delivery, ACE shall acquire a valid and unencumbered title to the Goods.
- 8 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE**
- 8.1 The Charges for the Goods and/or Services shall be as set out in the Order Form and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services. Unless otherwise agreed in writing by ACE, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the provision of the Goods and/or performance of the Services.
- 8.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate where applicable. ACE shall, where applicable and following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and/or Services.
- 8.3 In each invoice issued to ACE the Supplier shall include the relevant Purchase Order Number and breakdown of the Goods and/or Services supplied in the invoice period as well as appropriate details in order to allow for payment via BACS transfer (sort code and bank account details).
- 8.4 In consideration of the supply of the Goods and/or Services by the Supplier, ACE shall pay the Supplier the invoiced amounts via BACS no later than 30 (thirty) calendar days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order number and appropriate BACS details. ACE may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 8.5 If ACE fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of clause 8.4 after a reasonable time has passed (which shall be no less than 14 (fourteen) calendar days).
- 8.6 The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 20.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 26.
- 8.7 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- (a) provisions having the same effects as clauses 8.3 to 8.6 of this Agreement; and
- (b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same

effect as 8.3 to 8.7 of this Agreement.

- (c) In this clause 8.7, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from ACE in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

8.8 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to ACE in respect of any breach of the Agreement), that sum may be deducted unilaterally by ACE from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with ACE. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against ACE in order to justify withholding payment of any such amount in whole or in part.

**9 PREMISES AND EQUIPMENT**

9.1 If necessary, ACE shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Goods and/or Services. All equipment, tools and vehicles brought onto ACE's premises by the Supplier or the Staff shall be at the Supplier's risk.

9.2 If the Supplier supplies all or any of the Goods and/or Services at or from ACE's premises, on completion of the Goods and/or Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate ACE's premises. The Supplier shall be solely responsible for making good any damage to ACE's premises or any objects contained on ACE's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

9.3 If the Supplier supplies all or any of the Goods and/or Services at or from its premises or the premises of a third party, ACE may, during

normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Goods and/or Services are supplied at or from the relevant premises.

9.4 Where all or any of the Goods and/or Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by ACE in writing.

9.5 Without prejudice to clause 3.3(e), any equipment provided by ACE for the purposes of the Agreement shall remain the property of ACE and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to ACE on expiry or termination of the Agreement.

9.6 The Supplier shall reimburse ACE for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by ACE shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless ACE is notified otherwise in writing within 5 (five) Working Days.

**10 STAFF AND KEY PERSONNEL**

10.1 If ACE reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- (a) refuse admission to the relevant person(s) to ACE's premises;
- (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s); and/or
- (c) require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by ACE to the person removed is surrendered,

- and the Supplier shall comply with any such notice.
- 10.2 The Supplier shall:
- (a) ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - (b) if requested, provide ACE with a list of the names and addresses (and any other relevant information) of all persons who may require admission to ACE's premises in connection with the Agreement; and
  - (c) procure that all Staff comply with any rules, regulations and requirements reasonably specified by ACE.
- 10.3 For the purposes of this Agreement, the Supplier shall be considered an independent contractor of ACE and the Supplier and (if applicable) its Staff shall not be considered employees. Accordingly ACE is not obliged to pay any wages, salary, sickness or holiday pay. The Supplier shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of its Staff. The Supplier shall ensure that equivalent provisions to this clause are contained in its terms with its Staff.
- 10.4 ACE may, at any time during the Term, request that the Supplier provide the information which demonstrates how the Supplier or its Staff comply with clause 10.3 or why clause 10.3 does not apply to the Supplier or its Staff. ACE has a right to terminate this Agreement if:
- (a) the Supplier fails to provide the information in response to the request within a reasonable time or the information provided is inadequate to demonstrate compliance with clause 10.3;
  - (b) the specified information requested was not provided within the specified period; or
  - (c) the information provided demonstrates that the Supplier or its Staff are not complying with terms of clause 10.3.
- 11 ASSIGNMENT AND SUB-CONTRACTING**
- 11.1 The Supplier shall not without the written consent of ACE assign, sub-contract, novate or in any way dispose of the benefit and / or the burden of the Agreement or any part of the Agreement. ACE may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 11.2 Where ACE has consented to the placing of sub-contracts, the Supplier shall, at the request of ACE, send copies of each sub-contract, to ACE as soon as is reasonably practicable.
- 11.3 ACE may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.
- 12 INTELLECTUAL PROPERTY RIGHTS**
- 12.1 All Intellectual Property Rights in any materials provided by ACE to the Supplier for the purposes of this Agreement shall remain the property of ACE but ACE hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under this Agreement.
- 12.2 The ownership of all Intellectual Property Rights in any materials created or developed

by the Supplier pursuant to the Agreement or arising as a result of the provision of the Goods and/or Services shall vest in ACE. If, and to the extent, that the ownership of any Intellectual Property Rights in such materials vest in the Supplier by operation of law, the Supplier hereby assigns ownership of such Intellectual Property Rights to ACE by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

12.3 ACE hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use any Intellectual Property Rights in the materials created or developed by the Supplier pursuant to the Agreement and any Intellectual Property Rights arising as a result of the provision of the Goods and/or Services as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement

12.4 Without prejudice to clause 12.2, the Supplier hereby grants ACE 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 Supplier on the date of the Agreement or during the Term to the extent not falling within clause 12.2 including any modifications to or derivative versions of any such Intellectual Property Rights, which ACE reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Goods and/or Services provided.

12.5 If the Supplier is carrying out research on ACE's behalf, ACE will consider requests to use the research data in the Supplier's (or its Staff's) own academic work provided that the Supplier:

- (a) inform ACE of the overall objective of the academic work, the timetable and proposed date and place of publication;

- (b) acknowledge that the Supplier conducted the research on ACE's behalf and that it was funded by ACE in any publications or accompanying publicity;

- (c) anonymise all data to protect the identity of any individual or organisation;

- (d) provide a copy of the work to ACE before publication and make any reasonable amendments ACE may request to ensure accuracy; and

- (e) state that any views expressed are those of the Supplier and not necessarily those of ACE,

provided that, at all times ACE retains absolute discretion to refuse any request under this clause to use ACE's research data.

12.6 The Supplier shall indemnify, and keep indemnified, ACE 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 ACE as a result of or in connection with any claim made against ACE for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods and/or Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## 13 RECORDS

13.1 The Supplier shall keep and maintain until 6 (six) years after the expiry or termination of the Agreement, or as long a period as may be agreed between the Parties in writing, full and accurate records of the Agreement including the Goods and/or Services supplied under it and all payments made by ACE. The Supplier shall on request afford ACE or ACE's representatives such access to those records as may be reasonably requested by ACE in connection with the Agreement.

**14 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**

14.1 Subject to clause 14.2, each Party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the Disclosing Party; and
- (b) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

14.2 Notwithstanding clause 14.1, a Receiving Party may disclose Confidential Information:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) to the Serious Fraud Office where the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the Receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause (e) shall observe the Supplier's confidentiality obligations under the Agreement; and
- (f) where the Receiving Party is ACE:

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

(ii) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which ACE transfers or proposes to transfer all or any part of its business;

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

(iv) in accordance with clause 15.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on ACE under this clause 14.

14.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for ACE to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA or EIRs (as applicable) redacted) including any changes to the Agreement agreed from time to time.

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

**15 FREEDOM OF INFORMATION**

15.1 The Supplier acknowledges that ACE is subject to the requirements of the FOIA and the EIRs and shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by ACE to enable ACE to comply with its obligations under the FOIA and the EIRs;
- (b) transfer to ACE all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 (two) Working Days of receipt;
- (c) provide ACE with a copy of all Information belonging to ACE requested in the Request for Information which is in its possession or control in the form that ACE requires within 5 (five) Working Days (or such other period as ACE may reasonably specify) of ACE's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by ACE.

15.2 The Supplier acknowledges that ACE may be required under the FOIA and the EIRs to disclose Information concerning the Supplier or the Goods and/or Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier.

15.3 Notwithstanding any other provision in the Agreement, ACE shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods and/or Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**16 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA**

16.1 In this clause 16, the terms, "processes", "data controller" and data processor" shall have the same meanings given to them under Data Protection Legislation.

16.2 The Parties acknowledge that for the purposes of Data Protection Legislation, ACE is the data controller and the Supplier is the data processor of any Personal Data.

16.3 The Supplier shall and shall procure that its staff and sub-contractors shall comply with all Data Protection Legislation in relation to any Personal Data processed.

16.4 Without limiting clauses 16.2 and 16.3, the Supplier shall at all times (and shall ensure that at all times its staff):

- (a) process Personal Data only in accordance with the documented instructions received from ACE and during the term of this Agreement. The Supplier shall immediately inform ACE if, in the Supplier's opinion, an instruction from ACE infringes the Data Protection Legislation or any other applicable law;
- (b) ensure that any person to whom it provides the Personal Data is subject to appropriate confidentiality obligations;
- (c) disclose any Personal Data only on a need to know basis to staff directly concerned with the provision of the Goods and/or Services;
- (d) not transfer or direct the transfer of any Personal Data to any third party or process or direct the processing of Personal Data outside of the European Economic Area in each case without ACE's prior written consent (which consent may be

subject to conditions as directed by ACE);

has complied with this obligation; and

- (e) keep all Personal Data confidential, and have in place now and shall on a continuing basis take appropriate technical and organisational measures to keep all Personal Data confidential and secure and to protect against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, disclosure or access;
- (f) upon request by ACE, promptly do such other acts in relation to the Personal Data, or any part thereof, as ACE shall request to enable ACE to comply with its obligations under the Data Protection Legislation;
- (g) notify ACE promptly (and at least within 2 (two) Working Days) if it receives a request from a Data Subject or a complaint relating to a Data Subject and promptly provide ACE with all such data, information, cooperation and assistance as is required by ACE in order to respond to and resolve the request or complaint within any applicable time frames;
- (h) provide such information and allow for and contribute to audits, including inspections, conducted by ACE or an auditor mandated by ACE, as is reasonably necessary to enable ACE to satisfy itself of the Supplier's compliance with this clause 16 and the Data Protection Legislation;
- (i) on termination or expiry of this Agreement, and at any other time on ACE's request, either return or destroy (as elected by ACE) the Personal Data (including all copies of it) and confirm in writing that it

- (j) notify ACE without undue delay on becoming aware of any Personal Data Breach and promptly following notification, provide such data, information and assistance as is required by ACE in order for ACE to notify the Personal Data Breach to the Information Commissioner and/or Data Subject(s) and otherwise fulfil its obligations under Data Protection Legislation.

## 17 LIABILITY

17.1 Subject always to clauses 17.3 and 17.4:

- (a) the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Limit of Liability; and
- (b) except in the case of claims arising under clauses 12.6, 16 and 25.3, in no event shall the Supplier be liable to ACE for any:
  - (i) indirect loss or damage;
  - (ii) special loss or damage; and/or
  - (iii) consequential loss or damage.

17.2 Subject to clause 17.3, the aggregate liability of ACE in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including

- negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Charges.
- 17.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence or that of its Staff;
  - (b) fraud or fraudulent misrepresentation by it or that of its Staff;
  - (c) loss or damages caused to property of ACE by the Supplier's acts or omissions; and/or
  - (d) any other matter which, by law, may not be excluded or limited.
- 17.4 The Supplier's liability under the indemnity in clauses 12.6 and 25.3 or for breach of clause 16 shall be unlimited.
- 18 INSURANCE**
- 18.1 Without prejudice to ACE's other rights under this Agreement, the Supplier shall, during the Term, take out and maintain with reputable insurers such policies of insurance as may be necessary in accordance with Good Industry Practice to insure the Supplier against all manner of risks that might arise out of the acts or omissions of the Supplier or otherwise in connection with the Supplier's performance of its obligations under this Agreement, including, without limitation, in respect of the following risks:
- (a) employer's liability and any other insurances required by Law with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
  - (b) professional indemnity insurance with a minimum sum insured of £1 million (one million pounds sterling) in respect of any one occurrence;
  - (c) product liability cover with a minimum sum insured of £1 million
- (one million pounds sterling) in respect of any one occurrence;
- (d) loss, damage or destruction of any of ACE's or any member of its Group's property under the custody and control of the Supplier, with a minimum sum insured of £1 million (one million pounds sterling) in respect of any one occurrence; and
  - (e) public liability insurance for a minimum sum insured of £1 million (one million pounds sterling) in respect of any one occurrence.
- 18.2 On request, the Supplier shall submit to ACE documentary evidence that such insurance remains properly maintained.
- 18.3 The Supplier shall:
- (a) not by its acts or omissions cause any insurance cover or policy to become void or voidable; and
  - (b) immediately notify ACE in writing of any cancellation notice received from any insurer or of any material change in cover type or amount.
- 19 FORCE MAJEURE**
- 19.1 Neither Party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. Subject to clause 19.3, the date for performance of any affected obligations will be suspended for a period equal to the delay caused by the Force Majeure Event.
- 19.2 If a Party is delayed in or prevented from performing its obligations under this Agreement by a Force Majeure Event, such Party shall:
- (a) give notice in writing of such delay or prevention to the other Party specifying the nature and extent of

- the Force Majeure Event immediately on becoming aware of it; and
- (b) use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations.
- 19.3 If the Force Majeure Event continues for a period of 30 (thirty) days or more following notification, then either Party may terminate this Agreement by giving not less than 10 (ten) days' prior written notice to the other Party.
- 19.4 ACE shall not be liable to pay the Charges in relation to any Goods and/or Services that are not provided by the Supplier due to a Force Majeure Event.
- 20 TERMINATION**
- 20.1 ACE may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 (one) month (or, if the Agreement is less than 3 (three) months in duration, at least 10 (ten) Working Days) later than the date of service of the relevant notice.
- 20.2 Without prejudice to any other right or remedy it might have, ACE may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- (a) (without prejudice to clause 20.2(e)), is in material breach of any obligation under the Agreement which is not capable of remedy;
- (b) repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- (c) is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 (thirty) calendar days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- (d) undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- (e) breaches any of the provisions of clauses 10.2, 14, 15, 16, 21 and 24;
- (f) becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 20.2(f)) in consequence of debt in any jurisdiction; or
- (g) fails to comply with legal obligations in the fields of environmental, social or labour law; or
- (h) if this Agreement is subject to a Public Procurement Termination Event.
- 20.3 The Supplier shall notify ACE as soon as practicable of any change of control as referred to in clause 20.2(d) or any potential such change of control.
- 20.4 The Supplier may terminate the Agreement by written notice to ACE if ACE has not paid any undisputed amounts within 90 (ninety) calendar days of them falling due.

20.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.3, 9.1, 9.2, 9.5, 9.6, 10, 12, 13.1, 14, 15, 16, 17, 20.6, 22.3, 25.3, 26 and 27.9 or any other provision of the Agreement that either expressly or by implication has effect after termination.

20.6 Upon termination or expiry of the Agreement, the Supplier shall:

- (a) give all reasonable assistance to ACE and any incoming supplier of the Goods and/or Services; and
- (b) return all requested documents, information and data to ACE as soon as reasonably practicable.

## 21 PUBLIC PROCUREMENT TERMINATION EVENT

21.1 Consistent with ACE's rights of termination implied into the Agreement by Public Contracts Regulations 2015, in the event of a Public Procurement Termination Event, ACE shall promptly notify the Supplier and the provisions of clause 20.6 and this clause 21 shall apply as from the date of receipt by the Supplier of the notification of the Public Procurement Termination Event.

21.2 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.

21.3 ACE will not be liable to the Supplier for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to a Public Procurement Termination Event.

## 22 COMPLIANCE

22.1 The Supplier shall promptly notify ACE of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. ACE shall promptly notify the Supplier of any health and safety hazards which may exist or arise at ACE's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

22.2 The Supplier shall:

- (a) comply with all ACE's health and safety measures while on ACE's premises; and
- (b) notify ACE immediately in the event of any incident occurring in the performance of its obligations under the Agreement on ACE's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

22.3 The Supplier shall supply the Goods (including any packaging) and/or Services in accordance with ACE's environmental policy as provided to the Supplier from time to time.

22.4 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

## 23 ANTI-DISCRIMINATION AND EQUALITY

23.1 The Supplier shall comply with all anti-discrimination and equality legislation from time to time in force including, but not limited to, the Equalities Act 2010 and any subordinate or associated legislation.

23.2 The Supplier shall, as far as possible, comply with all statutory codes of practice issued from time to time by the Equality and Human Rights

- Commission or any of its predecessor bodies such as the Commission for Racial Equality. The Supplier shall provide any information ACE requires to determine whether the Supplier is complying with these codes of practice.
- 23.3 When working on ACE's premises, the Supplier shall comply with ACE's employment policies and codes of practice relating to diversity and equal employment opportunities.
- 23.4 The Supplier shall ensure that it maintains effective whistle-blowing policies whereby its employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.
- 24 PROTECTION OF CHILDREN AND VULNERABLE ADULTS**
- 24.1 This clause 24 will only apply if in providing Services the Supplier or its sub-contractors or Staff will supervise, care or have significant direct contact with a Vulnerable Person.
- 24.2 In this clause, "Vulnerable Person" means:
- (a) persons under the age of 18; and
  - (b) people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.
- 24.3 The Supplier shall consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the written consent of the legally authorised carer or guardian of the Vulnerable Person before having of any significant direct contact with the Vulnerable Person.
- 24.4 The Supplier shall check the backgrounds of and view disclosures from the Disclosure and Barring Service for the Supplier's potential employees, contractors or volunteers who will, in the course providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.
- 24.5 If the Supplier is the person having significant direct contact with Vulnerable Persons, it shall, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian its consent to having it (or its Staff or sub-contractors, as appropriate) background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.
- 24.6 The Supplier shall comply with sub-clauses 24.3 to 24.5 inclusive even if it is not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.
- 25 PREVENTION OF FRAUD AND CORRUPTION**
- 25.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 25.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify ACE immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 25.3 If the Supplier or the Staff engages in conduct prohibited by clause 25.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including ACE) ACE may:
- (a) terminate the Agreement and recover from the Supplier the amount of any loss suffered by ACE

resulting from the termination, including the cost reasonably incurred by ACE of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by ACE throughout the remainder of the Agreement; or

- (b) recover in full from the Supplier any other loss sustained by ACE in consequence of any breach of this clause.

**26 DISPUTE RESOLUTION**

- 26.1 The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.
- 26.2 If a Dispute arises between ACE and the Supplier during the Term in relation to any matter which cannot be resolved by local operational management either Party may refer the matter for determination in accordance with the procedure set out in clause 26.3.
- 26.3 A Dispute referred for determination under clause 26.2 shall be resolved by referral in the first instance to the decision of the Contract Managers for each of the Parties.
- 26.4 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 26.3 then either Party may exercise any remedy it has under applicable law.
- 26.5 Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this clause 26, such clause not applying in respect of any circumstances where such remedies are sought.

**27 GENERAL**

- 27.1 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 Agreement, and that the Agreement is executed by its duly authorised representative.
- 27.2 The Supplier warrants and represents that during the Term it shall not accept work from other sources that will in any way impair or affect its ability to provide the Goods and/or Services and comply with the terms of this Agreement.
- 27.3 The Supplier must make sure that neither it nor any of its Staff or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between their interests or the interests of its Staff or sub-contractors and the Supplier's obligations under this Agreement. You must disclose to ACE the particulars of any conflict of interest that arises.
- 27.4 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 27.5 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 27.6 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 27.7 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is

communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

27.8 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

27.9 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

27.10 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **28 NOTICES**

28.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 28.3, e-mail to the address of the relevant Party set out in the Order Form, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

28.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be

deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

28.3 Notices under clauses 19 (Force Majeure) and 20 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 28.1.

## **29 GOVERNING LAW AND JURISDICTION**

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