

# **CHANGING LIVES**

## **Standard Purchasing Terms and Conditions**

### **Goods and/or Services**

#### **1 DEFINITIONS AND INTERPRETATION**

In these Conditions the following words and definitions shall have the following meanings and will be applicable unless the context otherwise requires:

**Charges** – the payment the Purchaser will make to the Supplier in return for the Supplier providing the Goods and/or Services outlined in the contract.

**Commencement Date** – the date of the Purchase Order or the date on which the Supplier commence supplying the Goods and/or Services to Purchaser, whichever date is the earliest.

**Contract** – any contract between the Purchaser and the Supplier of goods and/or services comprising the Purchase Order, these conditions and any specification.

**Contract Value** – the monetary value of any Purchase Order as outlined therein.

**Default Notice** – a notice setting out the default, and if that default can be put right, the action needed to put it right and the timescale in which it must be put right.

**Delivery Address** – the address stated on the Purchase Order.

**Force Majeure Events** – any circumstances or events arising which are outside the reasonable control of either party (excluding any failure or default on the part of the Supplier, its suppliers and subcontractors and which could not have been reasonably foreseen at the time of signing the Contract. For the avoidance of doubt, such an event excludes strikes, lockouts or other industrial disputes which have their origin within the employees of the party so prevented or default of suppliers or sub-contractors or breakdown of vehicles.

**Fraud** – as defined under sections 2,3 and 4 of The Fraud Act 2006 whereby an offence has been committed in three classes - fraud by false representation, fraud by failing to disclose information, and fraud by abuse of position.

**Goods and/or Services** – all goods, materials, articles, works and services (or any part thereof) which the Purchaser requires the Supplier to provide to the Purchaser under this Contract as set out in the Purchase Order.

**Intellectual Property Rights** – means patents, trademarks, design rights (registered or otherwise), copyright, know-how, and other similar rights or obligations whether registrable or not in any country.

**Key Personnel** – all key staff or personnel identified as such in the Purchase Order.

**Purchaser** – means Changing Lives whose registered address is Changing Lives, Changing Lives, Central Office, Unit D13, Marquis Court, Tenth Avenue West, Team Valley, Gateshead, NE11 0RU, its affiliates, trading arms and legal successors

**Purchase Order** – means the purchase order which the Purchaser may place from time to time with the Supplier detailing the Goods and/or Services to be provided under this Contract.

**Property (Properties)** – the places where the Supplier will carry out the Services, or will deliver the Goods which are set out in the Specification or the Purchase Order (as applicable ).

**Specification** – the description included in the Purchase Order (or any other written description, design or plans) detailing the Purchaser's requirements for the supply of Goods and/or Services as required therein.

**Supplier** – the person, company or organisation with whom the Purchase Order is addressed to and accepted by, including its legal successors and assigns.

**TUPE** – the Transfer of Undertakings (Protection of Employment ) Regulations 2006, as amended from time to time.

#### **2. BASIS OF CONTRACT.**

**2.1** The Contract will be subject to these conditions to the exclusion of all other terms, conditions, provisions and/or statements including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement or any other document issued by the Supplier (whether introduced or made prior to or subsequent to the Purchase Order) or which are implied by trade, custom, practice or course of dealing.

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**2.2** The Purchase Order constitutes an offer made by the Purchaser to the Supplier to purchase the goods and/or services specified in accordance with these conditions. Unless previously indicated by Purchaser these orders shall be deemed accepted on the earlier of the Supplier either:

- counter-signing the Purchase Order;
- issuing of written confirmation and acceptance of the Purchase Order; or
- any act by the Supplier consisting with fulfilling the Purchase Order (including but not limited to supplying the goods and/or services in response to the Order).

**2.3** Should any queries arise from the Purchase Order, they must be raised and documented with the Purchaser within seven days of the issue of the order. Otherwise the Purchaser will be entitled to consider the Purchase Order as accepted by the Supplier.

**2.4** No variation to the Purchase Order or to these terms will be binding on the Purchaser unless they are issued or confirmed on the printed Order forms and approved in writing by the Purchasers authorised representative.

### **3. COMMENCEMENT AND TERM.**

**3.1** This Contract will start on the Commencement Date and will continue in force until the date on which the Supplier has delivered the Goods and/or completed the Services to the Purchaser's satisfaction in accordance with all Purchase Order and/or Specification (as applicable) or the date on which either of the parties terminates the Contract, whichever event happens earliest.

### **4. SUPPLIER RESPONSIBILITIES**

**4.1** The responsibilities of the Supplier outlined below are conditions of this Contract.

**4.2** The Supplier will provide the Goods and/or Services to the Purchaser with all reasonable skill and care.

**4.3** When providing the Goods and/or Services the Supplier will;  
Employ enough people, with suitable ability, skill, knowledge, training and experience to properly provide the Goods and/or supervise the Services.  
Follow all codes of practice, performance ratings and quality standards applicable to the Goods and/or Services.

Act in accordance with all legal regulations which shall apply to the Goods and/or Services in force at the relevant time.

**4.4** Supplier will ensure that staff, volunteers and permitted subcontractors are aware of and comply with their responsibilities under all policies and procedures applying to this Contract in addition to any legal requirements which relate to the provision of Goods and/or Services.

**4.5** Supplier will appoint a Contract Manager in accordance with clause 13 (Contract Management) of this Contract, who will be responsible for ensuring fulfilment of this Contract by the Supplier, and who will be available to assist the Purchaser in the event any issues or queries arising relating to the Goods and/or Services Purchase Order.

**4.6** If stated in the Purchase Order as being applicable, on or before the Commencement Date (or such other date as the Purchaser may require) the Supplier shall procure the execution and delivery of the following security documents;

- a performance bond at the value stated in the Purchase Order;
- a parent company guarantee;
- a vesting certificate;
- an advance payment bond.

The provision of these documents (if required) shall be a condition precedent to the Supplier's right to receive payment and the Purchaser may withhold any monies due and owing to the Supplier until such time as the documents have been provided.

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#### **5. PURCHASERS RESPONSIBILITIES**

##### **5.1** Purchaser shall:

- provide access to the properties as Supplier may reasonably require and at times agreed between the Purchaser and the Supplier.
- provide Supplier with any health and safety rules and regulations and any other reasonable security requirements that apply at any of the Properties.

#### **6. PRICE**

**6.1** The price of the Goods and/or Services shall be as set out in the Purchase Order and shall be fixed for the duration of the Contract.

**6.2** No variation in price shall apply unless agreed in writing by an authorised representative of the Purchaser, prior to the delivery of the Goods or upon completion of the Services.

**6.3** Unless otherwise stated in the Purchase Order, all prices payable under the Contract or any variation shall be inclusive of all direct and indirect taxes (other than Value Added Tax itemized on a valid Value Added Tax invoice) and duties, the cost of packaging, insurance, shipping, carriage, and any other costs, expenses and charges relating to the delivery of the Goods and/or performance of the Services.

#### **7. Termination**

**7.1** Either party will be entitled to give the other party notice to terminate this Contract immediately in circumstances where:

- a) being an individual, either party is declared bankrupt, or a bankruptcy petition is filed against either party at court, or if either party tries to make an arrangement for the benefit of creditors;
- b) either party is a corporate organisation and: has a receiver, administrative receiver or liquidator appointed; a proposal is made for a voluntary arrangement or for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- c) a shareholders' meeting is convened for the purpose of considering a winding-up resolution or a winding-up resolution is passed; a winding-up petition is presented or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened; an application is made for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; is or becomes insolvent; being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or any event similar to those listed in this clause 7.1.a) or 7.1.b) occurs;
- d) either party commits or causes anyone else to commit any criminal offence in providing the Goods and/or Services (except for any minor or minor traffic offence); or
- e) in relation to any Contract either party, or any person employed by either party or acting on their behalf, commits an offence under the Prevention of Corruption Acts 1889-1916, the Bribery Act 2010 or gives any fee or reward to anyone which is an offence under section 117(2) of the Local Government Act 1972.

**7.2** Purchaser will be entitled to terminate the Contract by serving Supplier with a Default Notice effective from the date specified in that notice if Supplier commits a material default that in the Purchaser's reasonable opinion cannot be remedied or that the Supplier has not remedied to the Purchaser's reasonable satisfaction within twenty (20) Working Days or within any other timeframe specified in the Default Notice.

**7.3** Purchaser will be entitled to terminate the Contract by giving one (1) month notice if the Goods or Services do not meet the standards set out in the Purchase Order or Specification (as applicable).

**7.4** Purchaser may terminate all or part of the Contract for any reason by giving the Supplier at least one (1) month notice in writing.

**7.5** If all or part of this Contract is ended, whether under clauses 20 (Defaults), or this clause, clause 7.7.below will apply.

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**7.6** When the Contract is completed, Supplier must return Purchaser all the information, files, records and documents the Purchaser has provided to the Supplier under this Contract. In addition the Purchaser shall retain all information, files, records and documentation which the Supplier produced while carrying out their responsibilities under the Contract.

**7.7** Supplier must not retain any copies of the information referred to in clause 26 (Information and Reading) unless Purchaser provides the Supplier with permission to do so or the Supplier may be required to do so under the law.

#### **8. TERMS RELATING TO THE SUPPLY OF GOODS**

**8.1** When Goods are to be supplied to Purchaser, the Supplier must:

- Comply with all applicable laws and regulations concerning the manufacture, packaging, packing and delivery of the Goods;
- Allow Purchaser to inspect or test the Goods during manufacture, processing or storage at Supplier's premises or the premises of Supplier's supplier, but Purchaser will only carry out any inspection or testing at reasonable times;
- Mark the Goods in accordance with Purchaser's instructions and any applicable laws and regulations and pack and secure them so that they reach the Delivery Address in an undamaged condition;
- Provide Purchaser with any instructions or other information which Purchaser may need to accept delivery of the Goods and to make use of and maintain the Goods.

**8.2** Purchaser will be entitled to reject any Goods delivered to Purchaser which are not in accordance with this Contract, and Purchaser will not be deemed to have accepted any Goods until Purchaser have had a reasonable time to inspect them after they have been delivered to the Delivery Address.

**8.3** The Supplier acknowledges that time for delivery of the Goods shall be of the essence and that delivering the Goods on the Delivery Date to the specified location detailed in the Purchase Order shall be critical for the avoidance of any loss to the Purchaser. Where no delivery date, to be carried out during the Purchaser's normal hours of business on a working day, has been instructed in the Purchase Order then the Supplier must provide a delivery date to the Purchaser within a reasonable time

**8.4** Purchaser may not accept any invoices for partial delivery of the Goods.

**8.5** Risk of damage to or loss of the Goods will pass to Purchaser upon delivery to the Delivery Address and acceptance of the Goods by Purchaser.

**8.6** Ownership of the whole of the Goods will pass to Purchaser upon delivery to the Delivery Address, unless Purchaser has made payment for the Goods before delivery, in which case title will pass to Purchaser upon the Purchaser having made payment in full to the Supplier for the Goods concerned.

**8.7** Supplier warrants to Purchaser that the Goods:

- will be of satisfactory quality and fit for any purpose Supplier has told Purchaser they will be fit for; or which Purchaser have set out in the Purchase Order
- will be free from defects in design, material and workmanship after delivery ;
- will correspond with all descriptions and specification (where relevant); and
- will comply with all Statutory requirements and regulations.

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#### **9. TERMS RELATING TO THE SUPPLY OF SERVICES**

**9.1** Where the Contract provides for or includes Services to be performed by the Supplier then the Supplier warrants to Purchaser that:

- the Supplier shall at all times perform the Services with all due skill, care and diligence including, but not limited to, industry best practice and in accordance with the Suppliers' own established internal procedures;
- the Supplier shall at all times make available sufficient personnel and any named persons in the Purchase Order and all other resources as are required for the successful and timely completion of the Services;
- the Services shall at all times be supplied by appropriately supervised, experienced, qualified, trained and competent personnel and;
- the Supplier shall carry out the Services strictly in accordance with the Purchase Order and the specification (where applicable).
- the Supplier shall provide all equipment, tools and services and such other items as are required to provide the Services.
- the Supplier shall use the best quality goods, materials, standards and techniques, and ensure the all goods and materials supplied and used in the Services will be free from defects in workmanship, installation and design.
- the Supplier shall obtain and at all times maintain all necessary licences and consents and comply will all applicable laws and regulations.
- the Supplier shall co-operate with the Purchaser in all matters relating to the Services and comply with any and all instructions from the Purchaser.
- the Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises
- the Supplier shall hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (Purchaser's Materials) in safe custody at its own risk, maintain the Purchaser's Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser's Materials other than in accordance with the Purchaser's written instructions or authorisation.
- the Supplier shall not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and the Supplier acknowledges that the Purchaser may rely or act on the Services.

**9.2** The decision of the Purchaser as to whether any person is to be admitted to, or is to be removed from the Purchaser's premises, or is not to become involved in or is to be removed from involvement in the performance of the Contract, shall be final and conclusive.

#### **10. INVOICING & PAYMENTS**

**10.1** In return for the Supplier carrying out their obligations under the Contract, Purchaser will pay the Supplier the Charges.

**10.2** The Charges will be as provided for in the Purchase Order.

**10.3** Purchaser will pay the Supplier the Charges each month in arrears, within thirty (30) days from the date the Purchaser receive a valid invoice. Time of payment shall not be of the essence.

**10.4** Invoices submitted to the Purchaser must quote the Purchase Order number concerned otherwise Purchaser reserves the right not to release payment against the invoice until this is provided. The Project Code/site name may also be required.

**10.5** The Charges, where applicable, shall include all materials, equipment, packaging, insurance, storage and delivery and the Supplier will not charge the Purchaser for any extra costs or expenses whatsoever unless they have been agreed in advance with the

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Purchaser's Contract Manager.

**10.6** The Charges are to exclude VAT. Where VAT is applicable, the Purchaser will pay this in addition to the Charges, subject of course to providing the Purchaser with a valid VAT invoice.

**10.7** The Charges will not be varied while this Contract is in force unless the Purchaser has agreed in writing to a different price to apply for the Goods and/or Services.

**10.8** In the event that the Purchaser has not paid the Supplier the Charges within thirty (30) Days of the due date for payment, the Supplier may charge the Purchaser interest due on the amount outstanding of any late payment (unless Purchaser disagree with the unpaid amount). The interest will be applied every day, from the date the Purchaser should have paid the Charges to the date when the Purchaser actually make the payment. The interest rate that will apply will be two per cent (2%) over the base rate current in force of Barclays Bank plc.

**10.9** Should a query concerning mistakes in the Charges not be settled within twenty (20) Working Days of either party raising the query, either party may ask for the matter to be dealt with under clause 23 (Disputes) and an appropriate adjustment to the Charges will be made once the disagreement has been resolved.

**10.10** Purchaser will be entitled to set off any sums the Supplier owes to the Purchaser

#### **11. DELIVERY & PERFORMANCE**

**11.1** The Supplier shall deliver the Goods and /or Services at the places and at the times detailed in the Purchase Order. If no delivery and times have been detailed therein, or have been notified by an authorised representative of the Purchaser, from time to time, then Purchaser shall have the right to change its delivery instructions at any time.

**11.2** The Purchaser shall be under no obligation to accept delivery of any Goods before the specified delivery time, but reserves the right to do so.

**11.3** The Supplier shall ensure that the Goods are properly packed and secured in such a manner as to reach their destination undamaged and in good condition. Purchaser shall not be obliged to return to the Supplier any packaging materials for the Goods.

#### **12. CONTRACT MANAGEMENT**

**12.1** From the Commencement Date both parties are each to appoint a person who shall act as their respective Contract Manager who can enforce their rights and powers under the Contract.

**12.2** At the date of the Purchase Order, Purchaser will provide each other with details in writing of the people appointed to act as Contract Managers, including their name, email address and contact telephone number. In the event of the Purchaser not having provided details of their nominated Contract Manager, then the requisitioner named on the Purchase Order will be deemed to be the Purchaser's Contract Manager.

**12.3** Either party will be entitled to change their Contract Manager at any time, but at least five (5) Working Days' notice in writing must be given, unless, for reasons beyond either party's control this is not possible, in which case notice must be given as early as possible.

**12.4** The Contract Manager must ensure that both parties share appropriate information concerning the quality standards and reporting requirements of the Contract with their staff who are involved in carrying out the Contract.

#### **13. LEGAL DUTIES**

**13.1** The Supplier is to fully co-operate with the Purchaser when Purchaser are carrying out any legal requirements and shall provide the Purchaser with any information or help Purchaser may need, on the basis that the Purchaser has given the Supplier reasonable notice.

**13.2** For example, the Supplier must allow the Purchaser's employees or authorised agents to:

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- speak to the Supplier's employees and inspect all the information, reports, financial accounts, documents and records the Supplier have or have access to and which may be relevant to the Contract for the Goods and/or Services.

**13.3** The Supplier must also allow the Purchaser to take copies of the information referred to in clause 13.2 above.

**13.4** The Purchaser will treat any information the Supplier provides under this clause 13 as Supplier's Confidential Information.

#### **14. HEALTH & SAFETY**

**14.1** The Supplier shall protect the health, safety and wellbeing of the Supplier's staff, volunteers and sub-contractors at all times. The Supplier must follow the requirements of the Health and Safety at Work Act 1974, and any other health and safety regulations and codes of practice in force at the relevant time.

**14.2** The Supplier is to ensure that the Supplier's staff observe all health and safety rules and regulations and any other security requirements the Purchaser informs the Supplier about (which must be reasonable) at any of the Purchaser's premises or any of their Properties.

#### **15. CONFIDENTIALITY**

**15.1** Both parties must do all they can to make sure that they (and any person the Supplier have employed or appointed to provide the Goods and/or Services) will:

- only use Confidential Information for the purposes of the Contract and not release any Confidential Information to anyone else without the other party's permission in writing (which the Purchaser will be entitled to refuse without giving any reason).

**15.2** The parties can both release Confidential Information to any consultant, contractor or other person involved with this Contract or who is involved in providing the Goods and/ or Services, as long as both parties ensure that such persons are made aware of and comply with the provisions of this clause and provided both parties each remain liable for any acts or omissions of their own consultants, contractors or other persons that result in a breach of these confidentiality provisions.

**15.3** The restrictions in this provision will continue to apply after the Contract has come to an end, but they will not apply (whether and while the Contract is in force or when it has ended) to information which:

- is available to the public (except if this is as a result of either party breaching this clause);
- either of parties have to release as required by law;
- was already in either parties possession without any restriction as to its use;
- either of the parties receive from someone else who is not restricted from disclosing it; or
- a Regulatory Body instructs both parties to release.

#### **16. DATA PROTECTION**

**16.1** In performing the Supplier's obligations under the Contract the Supplier agree to comply with the Data Protection Act 1998 as it applies to the Goods and/or Services provided under the Contract.

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#### **17. INTELLECTUAL PROPERTY RIGHTS**

**17.1** Nothing in this Contract shall affect the ownership of any Intellectual Property Rights existing prior to the date of or generated outside the scope of the Contract, which the parties may make available to each other. Any Intellectual Property created, generated or developed from the Goods and/or Services shall be owned by the Purchaser, whether made by the Purchaser, by the Supplier or by both parties together and the Supplier agrees that the Supplier will sign any deeds or documents which may be necessary to transfer any Intellectual Property Rights in the Goods and/or Services to Purchaser.

**17.2** Should any Intellectual Property Rights which the Purchaser need to use in respect of the Goods and/or Services be owned by a third party and the Supplier is unable to transfer them to the Purchaser, the Supplier agrees that the Supplier will grant the Purchaser a non-exclusive, royalty free, irrevocable licence to use such Intellectual Property Rights, or obtain permission from the third party for the Purchaser to use such Intellectual Property Rights without charge and with no limit in time for the purpose of using the Goods and/or Services.

**17.3** The Supplier agrees that should the Purchaser receive a claim from any third party claiming that the Supplier has passed on their Intellectual Property Rights illegally or without permission the Supplier will pay the Purchaser the amount of money which is claimed from Purchaser by the third party without Purchaser having to take the Supplier to court to enforce this right. Any claim the Purchaser may make from the Supplier under this clause will be unlimited in value.

#### **18. INSURANCE**

**18.1** The Supplier shall at its own expense effect and maintain:

- Employer's Liability Insurance at a minimum amount of £10 million in respect of any one claim without limit to the number of claims;
- Public/Products Liability Insurance at a minimum amount of £5 million in respect of any one claim without limit to the number of claims;
- Professional Indemnity Insurance at a minimum amount of £1 million in respect of any one claim without limit to the number of claims.

**18.2** All such policies maintained or procured shall contain a waiver of subrogation against the Purchaser, its group companies, the Purchaser's clients, the Purchaser's subcontractors and their respective officers, directors and employees.

**18.3** The Supplier shall produce on demand, and provide to the Purchaser prior to commencing any work, the policy documents (in force and full effect) and receipts of premiums of any insurance referred to above as evidence of such insurance.

**18.4** Should for whatsoever reason, the Supplier fail to give effect to and maintain the insurances required by the Contract, the Purchaser may make alternative arrangements to protect the Purchaser's interests and may recover the costs of such arrangements from the Supplier.

#### **19. LIMITATION OF LIABILITY**

**19.1** Nothing in these conditions shall limit or exclude the Supplier's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, loss of or damage to property or any other loss;
- fraud or fraudulent misrepresentation; or
- breach of the terms implied by Section 2 of the Supply of Goods and Services Act (1982).

Subject to the foregoing;

- the Supplier shall under no circumstance whatsoever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or



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otherwise, for any indirect or consequential loss arising under or in connection with the contract, and

- the Supplier's total liability to the Purchaser in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise to the extent allowed under the law of the contract, shall in no circumstances exceed the stated value of the contract.

This clause shall survive termination of the contract.

#### **20. DEFAULTS**

**20.1** Should the Supplier breach any of the terms of this Contract, the Purchaser will be entitled to serve the Supplier with a Default Notice. This will not affect any of the Purchaser's other rights, either under this Contract or by law.

**20.2** Should the Purchaser serve the Supplier with a Default Notice which relates to a default that can be put right, the Default Notice will tell the Supplier what the Purchaser considers the default to be and the timescale in which the Purchaser expect the Supplier to put things right.

**20.3** The Supplier will be entitled to apply the above clauses to the Purchaser but if the default involves the Purchaser failing to pay the Supplier the Charges on time, the Supplier must allow Purchaser a minimum of thirty (30) Days to rectify the position and pay the Charges.

**20.4** If there is any disagreement between the parties as to whether there has been a default, or about the action that needs to be taken or the timescale within which the action is to be taken, either of the parties can refer the matter for resolution in accordance with clause 23 (Disputes).

**20.5** If either of the parties fails to put right a default within the timescale set out in any Default Notice or within the timescale specified in clause 20.3 above each party will be entitled to terminate the Contract immediately by giving notice in writing.

#### **21. ASSIGNMENT AND SUBCONTRACTING**

**21.1** The Supplier must obtain the Purchaser's permission in writing in the event of the Seller seeking to:

assign the Supplier's rights in this Contract to any other party; or subcontract any of the Supplier's responsibilities under the Contract. The Purchaser will not unreasonably withhold or delay giving the Supplier permission to do so, as long as the Purchaser considers the other party to be suitable to carry out the Contract.

**21.2** In the event of the Purchaser giving the Supplier permission to assign or subcontract the Contract, the Supplier shall remain liable to the Purchaser for all of the Supplier's obligations set out in the Contract including those the Supplier may have subcontracted under. The Supplier will be responsible for the acts, failures and neglect of any subcontractor or any employee or agent of any subcontractor, as if they were the Supplier's own acts, failures and neglect.

#### **22. AGENCY**

**22.1** The Supplier must not tell anyone, or allow any of the Supplier's employees or agents to tell anyone, that the Supplier is the Purchaser's agents or servants.

**22.2** The Supplier must not enter into any contract on behalf of the Purchaser or in any way claim that the Supplier have been authorised to do so.

#### **23. DISPUTES**

**23.1** In the event of either parties disagreeing about anything related to the Contract, and it cannot be resolved by the Contract Managers within twenty (20) Working Days, then either of the parties may inform the other's Contract Manager in writing that they seek the disagreement to be referred to a meeting between respective director level in

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order to resolve by their negotiation on the basis of good faith.

**23.2** Should, after twenty (20) Working Days following the directors' meeting referred to in clause 23.1 above, and the dispute not have been resolved, then either of the parties may notify the other that they wish to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.

**23.3** Should both parties be unable to agree on the identity of the mediator then either of the parties may request CEDR to appoint one. The Model Procedure will be amended to take account of any relevant provisions in the Contract or any other contract which the parties may enter into.

**23.4** The parties must both use their best endeavours to ensure that the mediation starts within twenty (20) Working Days of service of the notice referred to in clause 23.2 above and pay the mediator's fee in equal shares.

**23.5** Any agreement reached as a result of mediation shall be binding on both of the parties, but if the disagreement has not been settled by mediation within ten (10) Working Days of the mediation starting then either of the parties may commence legal proceedings.

**23.6** Neither of the parties shall be prevented by this clause 23 from taking steps in relation to court proceedings to protect their position, including applying for interim relief or pursuing proceedings to prevent limitation periods from expiring or to protect their employees, agents, clients or customers.

#### **24. VARIATIONS TO THE CONTRACT**

**24.1** Any variation to this Contract (including to the nature of the Services) will only be valid if it has been agreed in writing by both of the parties.

#### **25. WAIVER**

**25.1.** Should either of the parties fail to enforce or delay in enforcing any right or solution which the parties are entitled to under the Contract or by law, this does not mean that either party no longer have this right or solution.

**25.2** Should either of the parties ignore a default on the part of the other, this does not mean that either party will ignore any future default.

**25.3** No waiver will be effective unless it is:

- Clear that it a waiver;
- In writing; and
- Signed by their authorised officers or Contract Manager as appropriate.

#### **26. INFORMATION AND READING**

**26.1** Upon the Purchaser's reasonable request and within twenty (20) Working Days of Purchaser asking the Supplier, the Supplier must provide the Purchaser with any information the Purchaser ask for (at no cost to the Purchaser) to help the Purchaser prepare the necessary documents to appoint an alternative Supplier to provide the Goods and/or Services.

**26.2** The Supplier must ensure that all the information the Supplier provided to the Purchaser is accurate, and permit the Purchaser the use any of the information in the course of the Purchaser's work.

#### **27. TUPE**

##### **27.1**

Where the Transfer of Undertakings(Protection of Employment) Regulations 2006 apply in respect of the award of the Contract the undertaking concerned

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or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract. For 6 months before the Contract expires the Supplier shall give to the Purchaser all employee information necessary for TUPE. The Supplier shall allow the Purchaser to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the Contract by allowing the body to whom the new contract is awarded ("the Transferee") to communicate with and meet the affected employees and/or their representatives.

The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information above.

The Supplier agrees to indemnify the Purchaser from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

**27.2** Subject to the Supplier's obligations under clause 16 (Data Protection Act) and clause 15 (Confidentiality) the Supplier must give the Purchaser the information the Purchaser needs to meet the Purchaser's responsibilities under TUPE when either the Contract comes to an end or it no longer applies to a particular Service.

**27.3** The Supplier must provide the Purchaser the information referred to in clause 26.1 above:

- within twenty (20) Working Days of the Purchaser's reasonable request made before the Contract comes to an end; or
- should the Contract or its application to a particular Service be terminated on notice within twenty (20) Working Days of the Supplier giving or receiving notice of any such termination; or
- should the Contract or its application to a particular Service be terminated immediately within twenty (20) Working Days of such termination.

#### **28. PREVENTION OF FRAUD**

**28.1** The Supplier must take all reasonable steps necessary to prevent fraud by their staff, volunteers and sub-contractors when fulfilling their obligations under the Contract.

**28.2** The Supplier will notify Purchaser immediately if the Supplier suspects that any Fraud or corruption has occurred or is likely to occur.

**28.3** The Supplier will not offer or give to the Purchaser or any of the Purchaser's staff any gift or reward as an incentive for entering into the Contract or any other contract with the Supplier. The Supplier will not show any favouritism to any person in relation to the Contract or any other contract with the Purchaser and the Supplier will also refrain from doing anything in order to give an advantage to any other party.

**28.4** The Supplier agree that they have not paid any commission to the Purchaser or agreed to pay any commission to any staff employed by the Purchaser in connection with the Contract.

**28.5** In performing the Supplier's obligations under the Contract the Supplier agree to comply with the Bribery Act 2010 as it applies to Goods and/or Services provided under the Contract.

**28.6** Should the Purchaser discover that the Supplier or any of the Supplier's staff have breached any of the terms this clause 28 in relation to this or any other contract with the Purchaser, the Purchaser may end the Contract immediately and claim from the Supplier

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any fines or penalties the Purchaser are liable to pay and any costs the Purchaser incur as a result of early termination of the Contract, including the costs of making other arrangements for the Goods and/or Services to be provided for the remainder of the Contract period.

#### **29. VALIDITY**

**29.1** In the event of one or more of the terms of this Contract are no longer valid or cannot be enforced under any law, the rest of this Contract will continue in full force.

**29.2** Should this event occur, both parties will enter into negotiations to amend the term concerned so that it is valid and can be enforced.

#### **30. REMEDIES**

**30.1** Any remedy or right which either of the parties may have in relation to a default committed by the other will be in addition to all other rights and remedies available in law to either of parties.

#### **31. CONTRACT (RIGHTS OF THIRD PARTIES)**

**31.1** The parties to the contract do not intend that any term of the contract to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

#### **32. NOTICES**

**32.1** Any notice or other communication under the Contract must be in writing and can only be sent by:

- recorded delivery post;
- hand;
- electronic mail;

**32.2** For the purposes of sending written notice or other communication by recorded delivery post, personal delivery or electronic mail, each of our relevant addresses are set out in the Contract. All notices and communications must be marked "For the Attention of the Contract Manager".

**32.3** All notices and communications will be considered to have been served:

- if posted, two (2) Working Days after the date of posting;
- if personally delivered, on the date of delivery;
- if sent by electronic mail, when a return receipt confirms that the mail has been received.

**32.4** If a notice is considered to have been served on a day which is not a Working Day or is not received between 9 am and 5 pm on a Working Day, it will be considered to have been served on the next Working Day.

#### **33. FORCE MAJEURE EVENTS**

**33.1** Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform any of its obligations under it if such delay or failure result from a Force Majeure event as long as they have given the other party prompt notice in writing of the Force Majeure event concerned having occurred.

**33.2** If a Force Majeure Event happens, the parties will meet to discuss how the Supplier can continue to provide the Goods and/or Services until the Force Majeure Event ends.

**33.3** The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure event upon the performance of its obligations.

**33.4** If a Force Majeure event prevents, hinders or delays the Suppliers performance of its obligations for a continuous period of more than a continuous period of more than 40

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working days from the date of the occurrence of the Force Majeure event the Purchaser may, without incurring any liability, terminate the Contract forthwith written notice to the Supplier.

#### **34. MITIGATION**

**34.1** Each of the parties shall at all times take all reasonable steps to minimise and mitigate any loss arising pursuant to the Contract.

#### **35. GOVERNING LAW AND JURISDICTION**

**35.1** This Contract shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract, its subject matter or formation.

#### **36. ENTIRE AGREEMENT**

**36.1** The Contract sets out all the terms and conditions which the parties have agreed to in relation to the Goods and/or Services. This means that it replaces any documents, negotiations or understandings between the parties, whether verbal or written, made, carried out or entered into before the date of the Contract.

#### **37. SURVIVAL**

**37.1** The provisions of clauses 1 (Definitions), 7 (Termination) 8 (Terms relating to Goods), 9 (Terms relating to Services), 13 (Legal Duties), 15 (Confidentiality), 17 (Intellectual Property Rights), 18 (Insurance), 19 (Liabilities), 22 (Agency), 23 (Disputes), 25 (Waiver), 27 (TUPE), 28 (Prevention of Fraud and Prevention of Corruption), 29 (Validity), 30 (Remedies), 31 (Contracts (Rights of Third Parties) Act 1999, 32 (Notices), 34 (Mitigation), 35 (Governing Law and Jurisdiction) and 36 (Entire Agreement) shall survive the termination or expiry of the Contract, together with any other provision which is either expressed to or by implication is intended to survive termination.