

**MODEL FCO CONTRACT FOR SERVICES/CONSULTANCY
(SHORT FORM – VALUE NOT EXCEEDING £15,000)**

SERVICES/CONSULTANCY CONTRACT – SHORT FORM

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

“**Authority**” means the Department, Agency or Authority named in the Purchase Order;

“**Authority Property**” means any property, other from land or buildings, issued or made available to the Contractor in connection with the Contract;

“**Authority Proprietary Material**” means all materials which were created or used by the Authority prior to the Contract Commencement Date or which are created independently of the delivery of the Services and Deliverables and for which the Intellectual Property Rights belong to the Authority or its licensors;

“**Confidential Information**” means the terms and conditions of this Contract, together with all information in whatever form and on whatever media of either party which relates to the business, affairs, trade secrets, products, services, marketing plans, software, databases, know-how, personnel, customers or suppliers of either party (as the case may be), whether marked as confidential or which otherwise may reasonably be regarded as the confidential information of a party and which is disclosed or acquired at any time whether before or after the Contract Commencement Date as a result or in anticipation of this Contract;

“**Contract**” means the contract between the Authority and the Contractor consisting of the Purchase Order, these Conditions, and any other documents (or parts thereof) specified in the Purchase Order;

“**Contract Commencement Date**” means [insert].

“**Contractor**” means the person, firm or company to whom the Contract is issued;

“**Contractor Proprietary Material**” means all materials which were created or used by the Contractor prior to the Contract Commencement Date or which are created independently of the delivery of the Services and Deliverables and for which the Intellectual Property Rights belong to the Contractor or its licensors;

“**Deliverables**” means any and all literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams,

tables, software or other information or materials (in whatever form and on whatever media) developed, designed or otherwise prepared by the Contractor in the course of its provision of the Services, whether developed individually or with the Authority;

“**Intellectual Property Rights**” means any patents, trade marks, design rights (registered or unregistered), applications for any of the foregoing, copyright, (including future copyright), database right, know-how, trade names, brand names, logos and business names and any other similar or equivalent rights arising or subsisting in any country in the world;

“**FOI Act**” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and any guidance issued by the Information Commissioner in relation to such legislation;

“**Premises**” means any premises of the Authority at which the Contractor performs the Services;

“**Purchase Order**” means the document setting out the Authority’s requirements for the Contract; and
“**Services**” means the service to be provided as specified in the Purchase Order and will, where the context so admits, include any materials, articles and goods to be supplied thereunder.

1.2 The headings to the Conditions will not affect their interpretation.

1.3 Except as otherwise expressly provided in this Contract, all remedies available to the Contractor or to the Authority under this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

1.4 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings whether written or oral, except that this Contract will not exclude liability in respect of fraudulent misrepresentation.

2. VARIATION OF SERVICES

2.1 The Authority reserves the right by notice to the Contractor to modify the quality or quantity of the Services and any alteration to the Contract price or the completion date arising by reason of such modification will be agreed

between the parties, each acting reasonably and subject to the rates set out in the Purchase Order, if any. Failing agreement, the matter will be determined in accordance with the provisions of Clause 25.

2.2 The Contract will not be varied unless such variation is agreed by the duly authorized representatives of the parties.

3. PROVISION OF SERVICES AND INSPECTION OF PREMISES

3.1 The Contractor is deemed to have satisfied itself as regards the nature and extent of the Services, and in relation to all matters connected with the Premises or any materials to be provided by the Authority to the Contractor; including but not limited to the suitability of the Premises or any Authority materials in relation to the provision of the Services.

3.2 The Authority will, at the request of the Contractor, grant such access as may be reasonable for this purpose, subject to the Contractor complying with any policies notified by the Authority from time to time.

4. CONTRACTOR’S STATUS

4.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.

4.2. In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:

(a) the Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and

(b) nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents

5. CONTRACTOR’S PERSONNEL

5.1 The Contractor will take the steps reasonably required by the Authority to prevent unauthorised persons being admitted to the Premises. If the Authority gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from

- involvement in the performance of the Contract, the Contractor will take all reasonable steps to comply with such notice and if required by the Authority the Contractor will replace any person removed under this Clause with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 5.2 If and when instructed by the Authority, the Contractor will give to the Authority a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require.
- 5.3 The decision of the Authority as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of it by this Clause will be final and conclusive.
- 5.4 The Contractor will bear the cost of any notice, instruction or decision of the Authority under this Clause.
- 6. MANNER OF CARRYING OUT THE SERVICES**
- 6.1 The Contractor will perform the Services with all due care, skill and diligence, and in accordance with good industry practice.
- 6.2 The Contractor will make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Authority's prior consent.
- 6.3 Access to the Premises will not be exclusive to the Contractor but only such as will enable it to carry out the Services concurrently with the execution of work by others. The Contractor will cooperate with such others as the Authority may reasonably require.
- 6.4 The Authority will have the power at any time during the progress of the Service to order in writing:
- (a) the removal from the Premises of any materials which in the opinion of the Authority are either hazardous, noxious or not in accordance with the Contract, and/or
 - (b) the substitution of proper and suitable materials, and/or
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship, is not in the opinion of the Authority in accordance with the Contract.
- 6.5 On completion of the Services the Contractor will remove its plant, equipment and unused materials and will clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
- 7. WARRANTIES**
- 7.1 The Contractor warrants and represents that, throughout the term of this Contract:
- (a) the Contractor has full capacity and authority and all necessary consents to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - (b) all components of the Services and Deliverables shall operate in accordance with the technical specifications and the standards in the Purchase Order;
 - (c) the Contractor has the full capacity and authority to perform the Services;
 - (d) the Services and Deliverables shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel;
 - (e) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 7) in accordance with its own established internal procedures; and
 - (f) the Contractor shall apply with all applicable laws in its provision of the Services including in respect of the FOI Act.
- 8. TIME OF PERFORMANCE**
- 8.1 The Contractor will begin performing the Services on the date stated in the Purchase Order and will complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Authority may by written notice require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor will submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 9. PAYMENT**
- 9.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears for work under a Purchase Order completed to the satisfaction of the Authority. For the avoidance of doubt, all costs and expenses for services performed by the Contractor and not agreed to by the Authority will be borne by the Contractor and not involved in any invoice. The sums due under a Purchase Order may be calculated on either a fixed price basis or a time and materials basis and the provisions of Clauses 9.2 and 9.3 will apply.
- 9.2 Whenever the parties agree in a Purchase Order that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of payments as detailed in the relevant Purchase Order which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.
- 9.3 Whenever the parties agree in a Purchase Order that the Services will be provided on a time and materials basis then:
- (a) the Services shall be provided in accordance with the rate card set out in the Purchase Order;
 - (b) the Parties shall agree an original estimate which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of requirements, further details of which shall be agreed by the Parties in the relevant Purchase Order ("**Original Estimate**");
 - (c) the Contractor shall attach to each invoice records of the time spent and materially used in providing the Services, together with all supporting documentation including but not limited to any relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and relevant Purchase Order details, as well as any other information as reasonably requested by the Authority from time to time; and
 - (d) the Contractor must notify the Authority as soon as it becomes apparent that the cost to complete the Services is likely to be in excess of the Original Estimate, and shall only proceed with and be paid for work in excess of the Original Estimate with the prior written consent of the Authority.
- 9.4 Payment by the Authority shall be without prejudice to any clauses or rights which the Authority may have against the Contractor and shall not constitute any admission by the Authority as to the performance of the Contractor of its obligations hereunder. Value Added Tax, where applicable, will be shown separately on all invoices as a strictly net extra charge. All other taxes, imposts and expenses will be borne by the Contractor and must not be included in any invoice.
- 9.5 The Contractor will submit invoices to the Authority denominated in Sterling, save where otherwise agreed.
- 9.6 If the Authority, acting in good faith, has a dispute in respect of any

invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within 5 working days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Clause 25.

9.7 In the event that the United Kingdom joins the Euro Monetary Union (and conversion between Sterling and Euro has been fixed), the Authority may, at any time thereafter, be entitled to require the Contractor at no additional charge to the Authority to convert the charges relating to the Services from Sterling into Euros (in accordance with EC Regulation 1103/97).

9.8 Payments which are not received by the Consultant when due will be considered overdue and remain payable by the Authority together with interest for late payment from the date payable both at the rate of 2% per annum above the base rate for the time being of the Bank of England. This interest will accrue daily and be payable on demand.

10. CLIENT PROPERTY

10.1 All Authority Property will remain the property of the Authority and will be used solely in the performance of the Contract and for no purpose without the prior written approval of the Authority.

10.2 The Contractor will be liable for any loss of or damage to any Authority Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Authority.

10.3 The Contractor will maintain all items of Authority Property in good and serviceable condition, fair wear and tear excepted and in accordance with the manufacturers recommendations.

11 HEALTH AND SAFETY

11.1 The Authority will use reasonable endeavours to notify the Contractor of any health and safety hazards which exist at the Premises and of which the Authority is aware and which may affect the Contractor. The Contractor will draw these hazards to the attention of its personnel engaged in the performance of this Contract at the Premises.

11.2 The Contractor will inform all persons engaged in the performance of this Contract at the Premises of all such hazards and will instruct such persons in connection with any

necessary associated safety measures.

12. SECURITY

The Contractor will comply with all reasonable security requirements of the Authority while on the Premises and will ensure that all its employees, agents and sub-contractors comply with such requirements.

13. AUDIT

The Contractor will keep and maintain until two years after the Contract has been completed records to the satisfaction of the Authority of all expenditures which are reimbursable by the Authority and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Authority on a time charge basis. The Contractor will on request afford the Authority or its representatives such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

14. CORRUPT GIFTS OR PAYMENTS

The Contractor must not offer to give, or agree to give, to any employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

15. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

[The Authority must decide whether IPR in the Deliverables is to be vested in/owned by the Authority or the Contractor. Option 1: IPR Vests in Authority]

[15.1] Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of Clause 15.3. The Contractor agrees to (and will procure that its personnel acting as consultants will) assign and hereby assigns by way of future assignment in the case of copyrights, to the Authority with full title guarantee all of its worldwide rights, title and interest (whether present,

future, vested or contingent) in and to such Intellectual Property Rights, including moral rights, for the full term thereof.

15.2 The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor as may from time to time be required in order to vest the rights assigned pursuant to Clause 15.1 above properly in the Authority .

15.3 Where the Deliverables contain any Contractor Proprietary Material, then the Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of such Contractor Proprietary Material, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction).

15.4 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in Clause 15.1. The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.]

[Option 2: IPR Vests in Contractor]

15.1 Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).

15.2 The Contractor will grant the Authority a perpetual, non-exclusive, transferable, worldwide, royalty-free licence in respect of Intellectual Property Rights in the Services or any Deliverables under this Contract (including for the purposes of their adaptation, modification and/or reproduction).

15.3 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in Clause 15.2. The Contractor agrees to indemnify and hold harmless the Authority against

any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.]

16. CONFIDENTIAL INFORMATION

16.1 Both parties acknowledge that during the course of this Contract they will receive Confidential Information of the other. Each party agrees to protect and preserve the confidentiality of all Confidential Information of the other using at least the same standard of care as it uses to protect its own Confidential Information of a similar nature but in no event a lesser standard than a reasonable standard of care. Each party agrees to hold all Confidential Information received under this Contract in confidence and not to disclose it to unauthorised third parties while this Contract continues in force and for a period of seven years thereafter.

16.2 Each party will only divulge Confidential Information of the other to those of its personnel for whom knowledge of the Confidential Information is necessary for the proper performance of their duties in relation to this Contract.

16.3 Nothing contained in this Contract will be construed to impose a confidentiality obligation in respect of information which:

- (a) is in the possession and at the free disposal of the recipient prior to the receipt of such Confidential Information by the recipient;
- (b) is or becomes publicly available on a non-confidential basis through no fault of the recipient;
- (c) is received in good faith by the recipient from a third party who, on reasonable enquiry by the recipient claims to have no obligations of confidence to the disclosing party in respect of it and who imposes no obligations of confidence upon the recipient;
- (d) is independently developed by or for it without any access to the Confidential Information of the other; or which the recipient is required to disclose by law or by any judicial, administrative or regulatory body.

17. LIMITATION OF LIABILITY AND INSURANCE

17.1 Neither party excludes or limits liability to the other party for:

- (a) death or personal injury;
- (b) any breach of any obligations implied by Section 12 of the

Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

(c) fraudulent misrepresentation.

17.2 Subject always to Clause 17.1, the Authority's liability to the Contractor will be limited to the sum of any payments made by the Authority to the Contractor pursuant to a Purchase Order.

17.3 Subject always to Clause 17.1, the Authority will not be liable to the Contractor for:

- (a) any indirect, special, or consequential losses of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Authority has been advised of the possibility of such loss occurring; and
- (b) any direct or indirect loss of profit, business, goodwill, revenues or anticipated savings.

17.2 The Contractor must have in force and will require any sub-contractor to have in force:

- (a) employer's liability compulsory insurance in the sum of not less than **[£5,000,000]** or as notified by the Authority from time to time, and
- (b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than **[£500,000]** for any one incident and unlimited in total, unless otherwise agreed by the Authority in writing.

17.3 The policy or policies of insurance referred to in paragraph 17.2, and the copy of the certificate of insurance that the Contractor is required to display in the workplace under the Employers' Liability (Compulsory Insurance) Regulations, will be shown to the Authority whenever it requests, together with satisfactory evidence of payment of premiums.

18. UNLAWFUL DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1997 or the Fair Employment and Treatment (Northern Ireland) Order 1998, relating to discrimination in employment. The Contractor shall adhere to the current relevant codes of practice and recommendations published by the Equal Opportunities Commission, the Commission for Racial Equality, the Department for

Education and Skills and the Ethnic Minority Employment Task Force. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all servant's, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of this Contract.

19. OFFICIAL SECRETS ACTS AND CONFIDENTIALITY

19.1 The Contractor undertakes to abide and procure that its employees abide by the provision of the Official Secrets Acts 1911 to 1989.

19.2 The Contractor must keep secret and not disclose and will procure that its employees keep secret and do not disclose any Confidential Information obtained by it by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

20. TERM AND TERMINATION

20.1 The Contract will commence on the Contract Commencement Date and will expire on **[insert]** unless it is otherwise terminated in accordance with the provisions of these Conditions, or as otherwise lawfully terminated.

20.2 The Authority may terminate the Contract by written notice having immediate effect if

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
- (b) where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against it; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within which the Contractor is resident or established; or
- (c) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any

- part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within which the Contractor is incorporated.
- 20.3 The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
- (a) the Contractor has not remedied the default to the satisfaction of the Authority within 30 days after service of written notice specifying the default and requiring it to be remedied; or
 - (b) the default is not capable of remedy; or
 - (c) the default is a fundamental breach of the contract.
- 20.4 The Authority will have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving [1 month's] written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension. Termination under this provision will not affect the rights of the parties that have accrued up to the date of termination.
- 20.5 If the Authority terminates the Contract under Clause 20.2 or terminates the provision of any part of the Services under that Clause, and then makes other arrangements for the provision of the Services, the Authority will be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the contract is terminated under Clause 20.2 no further payments will be payable by the Authority until the Authority has established the final cost of making those other arrangements.
- 20.6 The termination or expiry of this Contract will not prejudice or affect any right of action or remedy which has accrued or may thereafter accrue to either party.
- 20.7 In the event of termination of this Contract, the provisions of Clauses 13, 15, 16, 17, 19, 23, 25, and this Clause 20.7 will survive termination.
- 21. RECOVERY OF SUMS DUE**
Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or Contract with the Authority or with any department, agency or authority of the Crown.
- 22. ASSIGNMENT AND SUB-CONTRACTING**
- 22.1 The Contractor must not assign or sub-contract any portion of the Contract without the prior written consent of the Authority, sub-contracting any part of the Contract will not relieve the Contractor of any obligation or duty attributed to it under the Contract.
- 22.2 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract will be sent by the Contractor to the Authority immediately it is issued.
- 23. PUBLICITY**
- 23.1 Neither party may make any press announcements or publicise this Contract in any way without the prior written consent of the other party.
- 23.2 Notwithstanding Clause 23.1, the Authority may publicise this Contract in accordance with any legal obligation upon the Authority.
- 24. NOTICES**
Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile or other means of telecommunication resulting in the receipt of a written communication in permanent form (not email) and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have submitted therefore, will be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.
- 25. DISPUTE RESOLUTION**
- 25.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 25.2 If the dispute cannot be resolved by the parties pursuant to Clause 25.1 the dispute may, by agreement between the parties, be referred to mediation.
- 25.3 The performance of the Services will not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 25.2.
- 26. DATA PROTECTION**
- 26.1 Each party will comply with its respective obligations under the provisions of the Data Protection Act 1998.
- 26.2 Where the Contractor or any of its sub-contractors, as part of the services under this Contract, processes personal data on behalf of the Authority, the Contractor will, and will procure its sub-contractors to:
- (a) act only on instructions from the Authority; and
 - (b) comply with the Authority's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the Authority; and
 - (c) at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 26.3 The Authority may from time to time serve on the Contractor an information notice requiring the Contractor, within such time and in such form as is specified in the information notice, to furnish to the Authority such information as the Authority may reasonably require relating to:
- (a) compliance by the Contractor or by its sub-contractors within the Contractor's obligations to the Authority under this contract in connection with the processing of personal data; and/or
 - (b) the rights of data subjects, including but not limited to subject access rights, and the Contractor must comply with such notice.
- 27. WAIVER**
- 27.1 The failure of either party to insist upon strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled under the Contract, will not constitute a waiver and will not diminish the obligations established by the Contract. A waiver of any breach will not constitute a waiver of any other or subsequent breach.
- 27.2 No waiver of any provision of the contract will be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with Clause 24.
- 28. SEVERABILITY**
If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of the Contract will continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the

purpose of the Contract, the parties will immediately commence negotiations in good faith to remedy the invalidity.

29. THIRD PARTIES

This Contract is enforceable by the original parties to it and by their successors in title and permitted assignees. No provision of this contract will be enforceable by any person who is not a party to it

pursuant to the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available independently of that Act.

30. GOVERNING LAW

These Conditions will be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts.

The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor will the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.