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**FOL17/178: THE ROYAL PARKS’ APPRENTICESHIP SCHEME EDUCATION PROVIDER 2017-2021**

**GENERAL TERMS AND CONDITIONS OF CONTRACT**

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T H I S A G R E E M E N T is made the day of 2017

B E T W E E N

1. THE ROYAL PARKS LIMITED (hereinafter called ‘TRP’)) whose registered office is at the Old Police House, Hyde Park, London, W2 2UH (Company number 10016100); and
2. (<INSERT COMPANY NAME> (hereinafter called “the Contractor”), a company registered in England and Wales under company number <insert number> and having its registered office at <insert address>.

**INTRODUCTION**

(1) The Secretary of State for Culture Media and Sport (“the Secretary of State”) is responsible for the management of the Royal Parks by virtue of section 22 of the Crown Lands Act 1851 (as amended by other legislation) and pursuant to The Contracting Out (Functions relating to the Royal Parks) Order 2016, the Secretary of State has authorised TRP to manage the Royal Parks on behalf of the Secretary of State.

# DEFINITIONS

In these Conditions:

“Apprenticeship Scheme Coordinator” means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

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

“Authority” means the contracting authority, as defined in Regulation 2(1) of the Pubic Contracts Regulations 2015, in this case The Royal Parks Ltd (TRP).

“Clause” is a paragraph within a Condition.

"Client" means The Royal Parks Ltd.

“Commencement Date” means the date that the Contract was awarded.

“Condition” means a condition within the Contract.

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

"Contract" means the agreement between the Client and the Contractor consisting of these Conditions, the Specification, the Contractor’s Tender Response and any other documents (or parts thereof) specified by the Client.

"Contract Manager" means the person for the time being appointed by the Client as being authorised to administer the Contract on behalf of the Client or such person as may be nominated by the Contract Manager to act on its behalf.

“Contract Period” means the period of duration of the Contract in accordance with Condition 11.

"Contract Price" means the price exclusive of any applicable Tax, payable to the Contractor by the Client under the Contract, as set out in Schedule 3 (Price Schedule), for the full and proper performance by the Contractor of its part of the Contract as determined under the Conditions of the Contract but before taking into account the effect of any adjustment of price.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts (Works, Services and Supply) Regulations 2015 other than the Authority.

"Contractor" means the Education Provider with whom the Client enters into this Contract.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

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

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

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

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

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

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

“Month” means calendar month.

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

“Parks” means the areas which are for the time being under the control or management of TRP and to which the Park Regulations apply.

"Premises" means the location where the Goods are to be delivered and/or the Services are to be performed, as specified in the Specification.

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

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition).

“Schedule” means a schedule attached to, and forming part of, the Contract.

"Services" means the services to be provided as specified in the Specification and shall, where the context so admits, include any materials, articles or goods to be supplied there-under.

“Specification” means the description of the Goods or Services to be provided under the Contract and attached as in the Specification.

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

“Tender” means the Contractor’s tender response to the Invitation to Tender.

“Tax” means Value Added Tax, customs duties and any other taxes or duties.

# INTERPRETATION

## The interpretation and construction of this Contract shall be subject to the following provisions:

1. The terms and expressions set out in Condition 1 shall have the meanings ascribed therein.
2. Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
3. Words importing the masculine include the feminine and the neuter.
4. Reference to a Condition is a reference to the whole of that Condition unless stated otherwise.
5. Reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise.
6. References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
7. References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted.
8. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

# ENTIRE AGREEMENT

## 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 Clause shall not exclude liability in respect of any fraudulent misrepresentation.

## In the event and only to the extent of any conflict between the Specification, , Contractor’s Tender and other documents, these Conditions shall prevail.

# SCOPE OF CONTRACT

## Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Client and the Contractor.

# NOTICES

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

## Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail addressed to the other Party in the manner referred to in Clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

## For the purposes of Clause 5.2, the address of each Party shall be:

For the Client:

The Royal Parks

Ranger’s Lodge

Hyde Park

London

W2 2UH

For the attention of: Jane Pelly

Tel: 0300 061 2038

email: jpelly@royalparks.gsi.gov.uk

For the Contractor:

PLEASE INSERT ADDRESS HERE

For the attention of: PLEASE INSERT contact details for your Apprenticeships Scheme Coordinator here

Tel:

email:

## Either Party may change its address for service by notice in accordance with this Condition.

# INSPECTION OF PREMISES – NOT USED

# CLIENT PROPERTY

## Where the Client for the purpose of the Contract issues Client Property free of charge to the Contractor such Property shall be and remain the property of the Client. The Contractor shall not in any circumstances have a lien on the Client Property and the Contractor shall take all reasonable steps to ensure that the title of the Client to such Client Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Contract.

## Any Client Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within seven days of receipt.

## The Contractor shall maintain all Client Property in good order and condition and shall use Client Property solely in connection with the Contract and for no other purpose without prior Approval.

## The Contractor shall notify the Contract Manager of any surplus Client Property remaining after completion of the Contract and shall dispose of it as the Client may direct. Waste of such Client Property arising from negligence of the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights of the Client, the Contractor shall deliver up Client Property whether processed or not to the Client on demand.

## The Contractor shall ensure the security of all Client Property, whilst in the Contractor’s possession, either on its premises or elsewhere during the performance of the Contract, in accordance with the Client’s reasonable security requirements from time to time.

## The Contractor shall be liable for any and all loss of or damage to any Client Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Client. The Contractor's liability set out in this Clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Client. The Contractor shall forthwith inform the Contract Manager of any defects appearing in or losses or damage occurring to Client Property made available for the purposes of the Contract.

# MISTAKES IN INFORMATION

## The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

# CONFLICTS OF INTEREST

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

## The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after termination.

# FRAUD

## The Contractor shall safeguard the Client’s funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Contractor’s directors and suppliers. The Contractor shall notify the Client immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

# CONTRACT PERIOD

## The Contract shall take effect on the Commencement Date and shall expire automatically on the date specified in the Contract award notification, unless it is otherwise terminated in accordance with these Conditions, or otherwise lawfully terminated, or extended under Condition 12.

# POSSIBLE EXTENSION OF CONTRACT PERIOD

## Subject to satisfactory performance by the Contractor during the Contract Period, the Client may wish to extend the Contract for a further 4 years. The Client may approach the Contractor if it wishes to do so before the end of the Contract Period. The agreed Terms and Conditions in this Contract will apply throughout any such extended period.

# COMPUTER-READABLE OUTPUT

## On request, output data must be supplied in computer-readable form which is compatible with the use to which the data will be applied by the Authority. Before the data is prepared, the Contractor must agree with the Authority the file format and media to be used and the data structure required. The Contractor must bear all the costs for preparing the data in the agreed format, on the agreed media and in the required structure. Proposals to submit compressed data must also be agreed in advance with the Authority.

# ROYAL PARKS REGULATIONS

## The Contractor shall comply with “The Royal Parks and Other Open Spaces Regulations 1997” and any subsequent amendments.

# CONTRACTOR’S OBLIGATIONS

## The Contractor shall perform its obligations under the Contract in accordance with these Conditions.

# PREVENTION OF CORRUPTION

## The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Client any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

## The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of the Client by the Contractor or on the Contractor’s behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Client.

## Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, commit such an offence in relation to this contract, the Client has the right to:

1. terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination;
2. recover from the Contractor the amount or value of any such gift, consideration or commission; and
3. recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this Condition, whether or not the Contract has been terminated.

## In exercising its rights or remedies under this Condition, the Client shall:

1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act; and
2. give all due consideration, where appropriate, to action other than termination of the Contract.

# DISCRIMINATION

## The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

## The Contractor shall take all reasonable steps to secure the observance of Clause 17.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

# THE CONTRACTS (Rights of Third Parties) ACT 1999

## No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Client or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Condition 18. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

# ENVIRONMENTAL REQUIREMENTS

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

# HEALTH AND SAFETY

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

## The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Client’s Premises and which may affect the Contractor in the performance of the Contract.

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

## The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of the Contract on the Client’s Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

## The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of the Contract.

## The Contractor shall ensure that its health and safety policy statement and risk assessments (as required by the Health and Safety at Work etc Act 1974), and any other health and safety information that the Client may reasonably demand, are made available to the Client on request.

## Prior to Commencement of Full Operations, a Health and Safety Management Plan defining the demarcation between the respective health and safety responsibilities of the Contractor and the Authority shall be agreed with the Authority. This Management Plan shall also include emergency evacuation procedures.

# DATA PROTECTION ACT

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

## Notwithstanding the general obligation in Clause 21.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Client (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

1. provide the Client with such information as the Client may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
2. promptly notify the Client of any breach of the security measures required to be put in place pursuant to Clause 21.2; and
3. ensure that it does nothing knowingly or negligently which places the Client in breach of the Client’s obligations under the DPA.

## The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

# OFFICIAL SECRETS ACTS 1911 TO 1989 AND THE FINANCE ACT 1989

## The Contractor undertakes to abide by, and ensure that its Staff abide by the provisions of:

1. the Official Secrets Acts 1911 to 1989; and
2. Section 182 of the Finance Act 1989.

## In the event that the Contractor and its Staff fail to comply with this Condition, the Client reserves the right to terminate the Contract by giving notice in writing to the Contractor.

## The provisions of Clause 22.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

# CONFIDENTIALITY AND FREEDOM OF INFORMATION

## Each Party:

1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

## The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Client under or in connection with the Contract:

1. is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
2. is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

## The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

## The provisions of Clauses 23.1 to 23.3 shall not apply to any Confidential Information received by one Party from the other:

1. which is or becomes public knowledge (otherwise than by breach of this Condition);
2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
4. is independently developed without access to the Confidential Information; or
5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

## Nothing in this Condition shall prevent the Client:

1. disclosing any Confidential Information for the purpose of:
   1. the examination and certification of the Client’s accounts; or
   2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;

or

1. disclosing any Confidential Information obtained from the Contractor:
2. to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
3. to any person engaged in providing any services to the Client for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) the Client discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

## Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

## In the event that the Contractor fails to comply with this Condition 1, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.

## The provisions under this Condition 1 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

## The Contractor acknowledges that the Client is subject to the requirements the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Client (at the Contractor’s expense) to enable the Client to comply with these Information disclosure requirements.

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

1. transfer the Request for Information to the Client as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
2. provide the Client with a copy of all Information in its possession or power in the form that the Client requires within five Working Days of the Client requesting that Information; and
3. provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

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

### is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

### is to be disclosed in response to a Request for Information, and

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

## The Contractor acknowledges that the Client may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:

### without consulting with the Contractor, or

### following consultation with the Contractor and having taken its views into account.

## The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

## The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information in accordance with Clause 23.12.

# PUBLICITY, MEDIA, AND OFFICIAL ENQUIRIES

## Except with the written consent of the other Party, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way.

## Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 24.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 24.1 by its sub-contractors.

## The Authority reserves the right to make press announcements without the consent of the Contractor in an emergency. The Authority will, however, use its best endeavours to contact the Contractor before any such announcement is made.

## The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

# SECURITY

## The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.

## The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Clause 25.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

## Whilst on the Client’s Premises, Staff shall comply with all security measures implemented by the Client in respect of Personnel and other Persons attending those Premises. The Client shall provide copies of its written security procedures to the Contractor on request.

## The Client shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Client's Premises.

## The Contractor shall co-operate with any investigation relating to security which is carried out by the Client or by any person who is responsible to the Client for security matters and when required by the Client's Representative:

1. shall use his best endeavours to make any Staff identified by the Client's Representative available to be interviewed by the Client's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interviews is acceptable to both the Client's Representative and the Contractor's Representative; and
2. shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Client or by a person who is responsible to the Client for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Client shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

# CONTRACTOR’S STAFF

## The Client reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain in, any Parks:

1. any member of the Staff; or
2. any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the opinion of the Client, undesirable.

## If and when directed by the Client, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Contract to any Parks, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably desire.

## The decision of the Client as to whether any person is to be refused access to any Parks and as to whether the Contractor has failed to comply with Clause 26.2 shall be final and conclusive.

## The Contractor shall bear the cost of any notice, instruction or decision of the Client under this Condition.

# INTELLECTUAL PROPERTY RIGHTS

## It shall be a condition of the Contract that, except to the extent that the Goods and/or Services incorporate designs furnished by the Client, the Goods and/or Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall fully indemnify and keep indemnified the Client against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.

## The Contractor shall obtain Approval before utilising any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. Where such approval is given by the Client, the Contractor shall procure that the owner of the rights grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence to use, reproduce, modify, adapt and enhance the material subject to such rights. Such licence shall be perpetual and irrevocable and shall be granted at no cost to the Client.

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

1. furnished to or made available to the Contractor by the Client shall remain the property of the Client;
2. prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Client, and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

## The Contractor shall forthwith notify the Client if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith provided always that the Contractor shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations and shall, in such conduct, take due and proper account of the interests of the Client;

## The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and client basis) incurred in doing so.

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

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

1. modify any or all of the Services or Goods without reducing the performance or functionality of the same, or substitute alternative Goods or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Goods or Services or to the substitute Goods or Services; or
2. procure a licence to use and provide the Goods or Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client.

## The foregoing provisions of this Condition shall not apply insofar as any such claim or demand or action is in respect of:

1. any use by or on behalf of the Client of Goods or Services in combination with any item not supplied or authorised by the Contractor (which shall act reasonably in giving such authorisation) where such use of the Goods or Services directly gives rise to the claim, demand or action; or
2. the use by the Client of the Goods or Services in a manner not reasonably inferred from the Specification requirements of the Client; or
3. the Client’s unreasonable refusal to accept modified Goods or Services or substitute Goods or Services pursuant to Clause 27.7.

## If the Contractor has availed itself of the rights to modify the Goods or Services or supply substitute Goods or Services or to procure a licence and such exercise of the said rights has avoided any claim, demand or action for infringement, then the Contractor shall have no further liability under this Condition in respect of the said claim, demand or action.

## If a modification or substitution in accordance with Clause 27.7 above is not possible so as to avoid the infringement and the Contractor has been unable to procure a licence in accordance with Clause 27.7, Clause 27.1 shall apply.

## The foregoing states the entire liability of the Contractor with regard to the infringement of any Intellectual Property Right in connection with the performance of the Contract.

## At the termination of the Contract the Contractor shall immediately return to the Client all materials, work or records held, including any back up media.

## The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

# AUDIT AND THE NATIONAL AUDIT OFFICE

## The Contractor shall keep and maintain until two years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods and/or Services provided under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

# ASSIGNMENT AND SUB-CONTRACTING

## The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract or these Conditions.

## The Contractor shall be responsible for the acts and omissions of its sub contractors as though they are its own.

## Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Client immediately it is issued.

## The Contractor shall not use the services of self-employed individuals without prior Approval.

# WAIVER

## 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 shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

## No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Condition 5.

## 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 or subsequent breach of the Contract.

# SEVERABILITY

## If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall 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 shall immediately commence negotiations in good faith to remedy the invalidity.

# REMEDIES CUMULATIVE

## Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

# MONITORING OF CONTRACT PERFORMANCE

## The Contractor shall comply with the monitoring arrangements set out in Schedule 2 (Specification) including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.

# NOVATION

## Subject to Clause 34.3, the Client shall be entitled to:

1. assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract; or
2. novate this Contract to any body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Client provided that any such novation shall not increase the burden of the Contractor’s obligations pursuant to this Contract; or
3. novate this Contract to any private sector body which substantially performs the function of the Client provided that any such novation shall not increase the burden of the Contractor’s obligations pursuant to this Contract.

## Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to Clause 34.3, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Client.

## If the Contract is novated pursuant to Clause 34.1(b) to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as “the Transferee"):

1. the rights of termination of the Client in Condition 53 and 54 shall be available to the Contractor in the event of the bankruptcy, insolvency or Default of the Transferee;
2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Contractor;
3. the following Conditions and Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Contract had been amended by the Parties:
4. in Condition , the word "Crown" shall be replaced with the word "Client"
5. in Clause delete the words "and the Crown" and "or the Crown";
6. in Clause the words "or with any department, agency or authority of the Crown" shall be deleted;
7. Condition , ceases to be applicable in the event that the contract is novated to a private sector body;

## The Client shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

# EQUIPMENT

## The Contractor shall provide all the Equipment necessary for the provision of the Services.

## The Contractor shall make no delivery of Equipment nor commence any work on the Client’s Premises without obtaining the Client's prior Approval.

## All Equipment brought onto the Client's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. The Contractor shall ensure that the Client's Premises are appropriate to contain and operate the Equipment.

## The Contractor shall maintain all items of Equipment within the Client’s Premises in a safe, serviceable and clean condition.

## All Equipment shall be at the risk of the Contractor and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Client.

## The Client may at its option purchase any item of Equipment from the Contractor at any time, if the Client considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Client shall be the fair market value.

## The Client shall have the power at any time during the progress of the Services to order in writing:

1. the removal from the Client’s Premises of any Equipment which in the opinion of the Client are either hazardous, noxious or not in accordance with the Contract; and/or
2. the substitution of proper and suitable materials, plant, equipment; and/or
3. 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 Client in accordance with the Contract.

## On completion of the Services the Contractor shall remove the Equipment and unused materials and shall clear away from the Client’s Premises all rubbish arising out of the Services, make good any damage caused to the Client's Premises by the removal of the Equipment and leave the Client’s Premises in a neat and tidy condition.

## Access to the Client’s Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's suppliers as are necessary to the performance of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others as the Client may reasonably require.

# STANDARD OF WORK

## To the extent that the standard of work has not been specified in the Contract the Contractor shall use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence, and in accordance with good industry practice.

## The Contractor warrants and represents that all Staff assigned to the performance of the Service shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

## The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

## The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor’s compliance with the Contract.

# REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

## Where a complaint is received about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of this Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of Condition 56 of this Contract.

## In the event that the Client is of the opinion that there has been a fundamental breach of this Contract by the Contractor, or the Contractor’s performance of its duties under the Contract has failed to meet the requirements, then the Client may, without prejudice to its rights under Condition 56 of the Contract, do any of the following:

1. make such deduction from the payment to be made to the Contractor as the Client shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide;
2. without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to perform such part of the Services in accordance with the Contract;
3. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or
4. terminate, in accordance with Condition 56, the whole of the Contract.

## The Client may charge to the Contractor any cost reasonably incurred by the Client and any reasonable administration costs in respect of the provision of any part of the Services by the Client or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

## In the event that the Client enforces any of its rights under Condition 56, the Contractor shall forthwith deliver up to the Client all Client Property (including, but not limited to, access to keys) relating to the Services or part of the Services.

## If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Client and such failure is capable of remedy, then the Client shall instruct the Contractor to perform the work and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 14 days or such other period of time as the Client may direct.

## In the event that:

1. the Contractor fails to comply with Clause 37.5. above; or
2. the Contractor persistently fails to comply with Clause 37.5 above, and such failures, taken as a whole, materially adverse the commercial interests of the Client

the Client reserves the right to terminate the Contract by notice in writing with immediate effect.

## The remedies of the Client under this Condition may be exercised successively in respect of any one or more failures by the Contractor.

# VARIATION OF THE SERVICES

## The Client reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called “a Variation”.

## In the event of a Variation the Contract Price may also be varied. Such Variation in the Contract Price shall be calculated by the Client and agreed with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Condition 63.

## The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

# LICENCE TO OCCUPY CLIENT’S PREMESIS

## Any land or Premises (including temporary buildings) made available to the Contractor by the Client in connection with the Contract, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

## The Contractor shall not use the Client’s Premises for any purpose or activity other than the provision of the Services unless given prior Approval.

## Should the Contractor require modifications to the Client’s Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor’s expense. The Client shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Client. At the Client's option, the Client may make modifications to the Client's Premises to return them to their original specification. Such modifications shall be carried out by the Client at the Contractor's expense.

## The Contractor and Contractor's employees, servants, agents, suppliers or sub-contractors shall observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

## The Parties agree that there is no intention on the part of the Client to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Client retains the right at any time to use in any manner the Client sees fit any premises owned or occupied by it.

# PROFESSIONAL INDEMNITY

## The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such insurance shall be maintained for a minimum of 12 (twelve) years following expiration or earlier termination of this Contract.

# TUPE

## The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract.

## During the period of six months preceding the expiry of the Contract or after the Client has given notice to terminate the Contract or the Contractor stops trading, and within 20 working days of being so requested by the Client, the Contractor shall fully and accurately disclose to the Client for the purposes of TUPE all information relating to its employees engaged in providing Services under the Contract, in particular, but not necessarily restricted to, the following:

1. the total number of Staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and
2. for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
3. full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
4. details of pensions entitlements, if any; and
5. job titles of the members of Staff affected and the qualifications required for each position.

## The Contractor shall permit the Client to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Contract by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.

## The Contractor agrees to indemnify the Client 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 under Clause 41.2.

## The Contractor agrees to indemnify the Client 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.

## In the event that the information provided by the Contractor in accordance with Clause 41.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Client of the inaccuracies and provide the amended information.

## The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

# OVERTIME WORKING

## The Contractor shall not normally be prevented from working reasonable overtime hours on the Authority's Premises if he so desires, provided that he obtains prior Approval and it is at no additional cost to the Authority.

# PROGRESS REPORTS

## Where progress reports are required to be submitted under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.

## The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

# RE-TENDERING AND HANDOVER

## Within 21 days of being so requested by the Authority's Representative, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all information necessary to enable the Authority to issue tender documents for the future provision of the Services.

## The Authority shall take all necessary precautions to ensure that the information referred to in Clause 44.1 is given only to service providers who have qualified to tender for the future provision of the Services. Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as any be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

## The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Clause 44.1.

## The Contractor shall not:

1. at any time during the Contract Period including any extension of the original Contract Period, move any persons in his employment into the undertaking or relevant part of an undertaking which provides the Services, who do not meet the standards of skills and experience, or who are in excess of the number, required for the purposes of the Contract; or
2. make any substantial change in the terms and conditions of employment of any Staff which is inconsistent with the Contractor's established employment and remuneration policies.

## Where, in the opinion of the Authority's Representative, any change or proposed change in the Staff in the undertaking or relevant part of an undertaking, or any change in terms and conditions of employment of such Staff, would be in breach of Clause 44.4, the Authority shall have the right:

1. to make representations to the Contractor against the change or proposed change;
2. to give notice to the Contractor requiring him to remedy the breach within 30 days; and
3. if the Contractor has not remedied the breach to the satisfaction of the Authority's Representative by the end of the period of 30 days, to terminate the Contract by reason of the default of the Contractor, in accordance with Condition 56.

## The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the new contractor, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

## Within 10 working days of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

# CONTRACT PRICE

## In consideration of the performance of the Contractor’s obligations under the Contract by the Contractor, the Client shall pay the Contract Price.

## In the event that the cost to the Contactor of performing its obligations under the Contract increases or decreases as a result of any new legislation or regulation being made after the commencement of the Contract, any variation to the Contract Price will be assessed on an individual basis. Such variation will not be allowed in relation to legislation or regulations enacted after the commencement of the Contract, which were made public prior to the commencement of the Contract. The impact of any such variation on the Contractor's costs will be deemed to have been included in the Contract Price.

## The Client shall pay the Contractor, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of Services provided in accordance with the Contract.

# PAYMENT AND TAX

## Payment will be made in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.

## Each invoice shall contain all appropriate references and a detailed breakdown of the Goods/Services and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.

## Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub contract requirements.

## Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

## The Client may reduce payment in respect of any Goods/Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Client.

# RECOVERY OF SUMS DUE

## Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Client.

## Any overpayment by either Party, whether of the Contract Price or of Tax or otherwise, shall be a sum of money recoverable by the Party that made the overpayment from the Party in receipt of the overpayment.

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

# PRICE ADJUSTMENT ON EXTENSION OF THE INITIAL CONTRACT PERIOD

## The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to Condition 12 (Possible Extension of Contract Period) the Client shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

## If the Parties are unable to agree a variation in the Contract Price in accordance with Clause 48.1, the Contract shall terminate at the end of the Initial Contract Period.

## If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

## Any increase in the Contract Price pursuant to Clause 48.1shall not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) between the previous Indexation Adjustment Date and the date 6 Months before the end of the Initial Contract Period.

# INDEXATION

## The Contract Price shall be subject to increase by way of indexation and the following provisions shall apply:

1. the relevant adjustment shall:
2. be applied on the effective date of the increase in the relevant Contract Price by way of Indexation **(“Indexation Adjustment Date**”) which shall be subject to Clause 49.1(b);
3. be determined by multiplying the relevant amount or sum by the percentage increase in the Consumer Price Index in the last twelve (12) Months immediately preceding the relevant Indexation Adjustment Date;
4. where the published CPI Index figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Client and the Supplier shall agree otherwise;
5. if the CPI Index is no longer published, the Client and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula.
6. The earliest Indexation Adjustment Date will be the 1st Working Day following the first anniversary of the Commencement Date. Thereafter, any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Contract Period.

# PAYMENT OF SUB-CONTRACTORS

## Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

# INDEMNITY AND INSURANCE

## Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for 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.

## The Contractor shall indemnify and keep indemnified the Client fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract in respect of any death or personal injury, or loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

## The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor’s performance of the Contract, including death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

## The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

## The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

## The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 51.2.

# WARRANTIES AND REPRESENTATIONS

## The Contractor warrants and represents that:

1. The Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor.
2. 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 Condition) in accordance with its own established internal procedures.
3. All obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.
4. The Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

# TERMINATION ON CHANGE OF CONTROL OR INSOLVENCY

## The Client may terminate the Contract by notice in writing with immediate effect where:

1. the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or
2. the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm’s affairs; or
3. the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
4. where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
5. any similar event occurs under the law of any other jurisdiction within the United Kingdom.

## The Client may only exercise its right under Clause 53.1 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

# TERMINATION ON DEFAULT

## The Client may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Apprenticeship Scheme Coordinator with immediate effect if the Contractor commits a Default and if:

1. the Contractor has not remedied the Default to the satisfaction of the Client within 30 days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or
2. the Default is not capable of remedy; or
3. the Default is a fundamental breach of the Contract.

## If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Client shall be entitled to terminate this Contract by notice to the Contractor or the Contractor's Representative with immediate effect.

## In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

# BREAK

## The Client shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving one Month’s written notice to the Contractor. The Client may extend the period of notice at any time before it expires.

# CONSEQUENCES OF TERMINATION

## Where the Client terminates the Contract under Condition 54, or terminates the provision of any part of the Contract under that Condition, and then makes other arrangements for the provision of Services, the Client shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 56, no further payments shall be payable by the Client to the Contractor until the Client has established the final cost of making those other arrangements.

## Where the Client terminates the Contract under Condition 55 the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Condition 55.

## The Client shall not be liable under Clause 56.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the initial Contract Period.

# DISRUPTION

## The Contractor shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.

## The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

## In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Client's Approval to its proposals to perform its obligations under the Contract.

## If the Contractor’s proposals referred to in Clause 57.3 are considered insufficient or unacceptable by the Client, then the Contract may be terminated by the Client by notice in writing with immediate effect.

## If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Client, an appropriate allowance by way of extension of time will be approved by the Client. In addition, the Client will reimburse any additional expense incurred by the Contractor in fulfilling the provisions of the Contract as a result of such disruption.

# RECOVERY UPON TERMINATION

## Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Client accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## At the end of the Contract Period (and howsoever arising) the Contractor shall forthwith deliver to the Client upon request all the Client’s Property (including but not limited to materials, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this Clause the Client may recover possession thereof and the Contractor grants licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

## The Contractor shall co-operate with the Client and any new contractor appointed by the Client to continue or take over the performance of the Contract free of charge in order to ensure an effective handover of all work then in progress.

## The provisions of this Condition shall survive the continuance of this Contract and indefinitely after its termination.

# FORCE MAJEURE

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

## Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money)if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.

## Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

## Condition 60 does not affect the Client’s rights under sub Clause 58.4.

## If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Clause 59.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

## For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

# GOVERNING LAW

## This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

# DISPUTE RESOLUTION

## The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 30 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Finance Director (or equivalent) of each Party.

## Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.

## If the dispute cannot be resolved by the Parties pursuant to Clause 61.2 the dispute shall be referred to mediation pursuant to the procedure set out in sub Clause 61.5unless (a) the Client considers that the dispute is not mitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

## The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

## The procedure for mediation and consequential provisions relating to mediation are as follows:

1. a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator.
2. The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
5. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
6. If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to Arbitration pursuant to the procedures set out in Clause 61.7.

## Subject to Clause 61.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 61.3 and 61.5 have been completed save that:

1. the Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 61.7.
2. if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 61.7.
3. the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause 61.7, to which the Client may in its discretion consent as it sees fit.

## In the event that any arbitration proceedings are commenced pursuant to Clause 62.6, the following provisions shall apply:

1. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
2. the Client shall give a written notice of arbitration to the Contractor (“the Arbitration Notice”) stating:
3. that the dispute is referred to arbitration; and
4. providing details of the issues to be resolved;
5. the LCIA procedural rules in force at the date that the dispute was referred to arbitration in accordance with 61.7(b) shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
6. the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
7. if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Client under 61.7(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
8. the arbitration proceedings shall take place in London and in the English language; and
9. the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.