

## CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

<b>CUSTOMER</b> <i>(check the box of the contracting Kew entity)</i>	<input type="checkbox"/> <b>The Board of Trustees of the Royal Botanic Gardens, Kew</b> a non-departmental public body with exempt charitable status whose principal place of business is at The Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB  <input type="checkbox"/> <b>RBG Kew Enterprises Limited</b> (registered company no. 02798886) with registered office at The Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB
<b>SUPPLIER</b>	(Name) (Address/Registered office) (Company no.)

<b>GOODS</b>	
<b>GOODS SPECIFICATION</b>	
<b>PERMITTED TOLERANCE</b>	[Between 95% - 105%]
<b>GOODS DELIVERY DATE(S)</b>	
<b>GOODS DELIVERY INSTRUCTIONS</b>	
<b>PRICE FOR GOODS</b>	
<b>GOODS PAYMENT PLAN</b>	The Supplier shall invoice the Customer on or at any time after completion of delivery. <i>(or delete and insert payment plan as agreed)</i>

<b>SERVICES</b>	
<b>SERVICE SPECIFICATION</b>	
<b>SERVICE PERFORMANCE DATE(S)</b>	
<b>KEY PERSONNEL</b> <i>(if applicable)</i>	Name: Role:
<b>CHARGES FOR SERVICES</b>	
<b>SERVICES PAYMENT PLAN</b>	The Supplier shall invoice the Customer on or at any time after completion of the Services. <i>(or delete and insert payment plan as agreed)</i>

<b>SPECIAL CONDITIONS</b> <i>(if any)</i>	
<b>POLICIES</b> <i>(check/insert any which apply)</i>	<input type="checkbox"/> Retail, Ethical and Environmental Sourcing Policy <input type="checkbox"/> Environmental Policy <input type="checkbox"/> Special Conditions for Timber and Wood-Derived Products <input type="checkbox"/> Contractors' Code of Practice <input type="checkbox"/> Data Processor Schedule
<b>CUSTOMER CONTACT</b>	(Name) (Telephone/Email)
<b>SUPPLIER CONTACT</b>	(Name) (Telephone/Email)

The parties each agree to the terms of the Contract (which expression includes this document, the attached Standard Terms & Conditions (Goods & Services), any documents attached as schedules, and any Special Conditions). For the purposes of the attached Standard Terms & Conditions (Goods & Services), references to the 'Order' shall be treated as references to this document.

Signed by.....

Signed by .....

**Name:**  
**Authorised signatory**  
**on behalf of the Customer**

**Name:**  
**Authorised signatory**  
**on behalf of the Supplier**

# TERMS AND CONDITIONS (GOODS AND SERVICES)

1. **INTERPRETATION**
- 1.1 Definitions. In these Conditions, the following definitions apply:  
**Commencement Date:** has the meaning set out in clause 2.2.  
**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.12.  
**Contract:** the contract between the Customer and the Supplier for the purchase of Goods and/or Services in accordance with these Conditions and any Special Conditions.  
**Contractors' Code of Practice:** the Customer's document providing safety, welfare, health and other guidelines for contractors working on site for the Customer.  
**Customer:** the customer as stated on the Order.  
**Customer Materials:** all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.  
**Deliverables:** all documents, products and materials specified in the Service Specification or developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, data, specifications and reports (including drafts).  
**Delivery Location:** the Customer's premises at either the Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB or Wakehurst Place, Ardingly, West Sussex RH17 6TN or such other location as is set out in the Order or instructed by the Customer before delivery.  
**Goods:** the goods (or any part of them) set out in the Order.  
**Goods Payment Plan:** the plan for payment of the price payable for the Goods as set out in the Order;  
**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.  
**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.  
**Order:** the Customer's order for the purchase of Goods and/or Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation, as the case may be.  
**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.  
**Services Payment Plan:** the plan for payment of the charges payable for the Services as set out in the Order;  
**Service Specification:** the description or specification for Services agreed in writing by the Customer and the Supplier.  
**Special Conditions:** any special conditions of contract stated or referred to on the face of the Customer's purchase order form or otherwise agreed in writing by the Customer and the Supplier.  
**Supplier:** the person or firm from whom the Customer purchases the Goods and/or Services.  
**Supplier Personnel:** the Supplier's personnel who will be involved in the performance of the Contract.
2. **BASIS OF CONTRACT**
- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with the Contract. The Order shall be deemed to be accepted on the earlier of:
- 2.2 (a) the Supplier issuing written acceptance of the Order; or  
(b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions and any Special Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 In the event of any conflict between these Conditions and any Special Conditions, the Special Conditions shall take precedence over any other provisions of these Conditions.
- 2.5 All of these Conditions shall apply to the purchase of both Goods and Services except where the application to one or the other is specified.
3. **SUPPLY OF GOODS**
- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Goods Specification;  
(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;  
(c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and  
(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
4. **DELIVERY OF GOODS**
- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;  
(b) any packaging used is capable of easy recovery for further use or recycling;
- (c) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (d) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- (a) on the date specified in the Order or, if no such date is specified, then as may be reasonable in the circumstances, being no later than 10 working days of the date of the Order to the Delivery Location;  
(b) during the Customer's normal hours of business, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If the Supplier:
- (a) delivers less Goods than the quantity ordered and the quantity delivered is outside of the permitted tolerances stated on the Order (if any), the Customer may reject the Goods; or  
(b) delivers more Goods than the quantity ordered and the quantity delivered is outside of the permitted tolerances as stated on the Order (if any) the Customer may at its sole discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the price for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 8.1.
- 4.6 Title to the Goods shall pass on the earlier of payment or the completion of delivery of the Goods in question in accordance with clause 4.3.
- 4.7 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.3.
5. **SUPPLY OF SERVICES**
- 5.1 The Supplier shall from the Commencement Date or from the date set out in the Order (whichever is the earlier) and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;  
(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;  
(c) use personnel who satisfy any requirements set out in the Order and who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;  
(d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;  
(f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;  
(g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;  
(h) hold the Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (i) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.
- 5.4 Where key personnel are specified in the Order the Supplier shall:
- (a) ensure that the key personnel perform the role that has been allocated to them;  
(b) ensure that the key personnel will not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other extenuating circumstances;  
(c) ensure any replacements to the key personnel are subject to the Customer's approval and of at least equal status or of equivalent experience and skills to the key personnel being replaced and shall be suitable for the responsibilities of that person in relation to the Services; and  
(d) (at the Customer's request) promptly remove any key personnel whose continued presence would in the reasonable opinion of the Customer be undesirable.
- 5.5 The Customer shall not unreasonably withhold its agreement or approval under clauses 5.4(b) or 5.4(c), such agreement and approval shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in key personnel.
- 5.6 The Supplier shall notify the Customer of the names of the Supplier Personnel and the Supplier shall promptly notify the Customer of any subsequent changes to such Supplier Personnel.
- 5.7 The Supplier shall implement any recommendations and requirements made by the Customer to modify the provision of the Services as soon as reasonably practicable.
- 5.8 The Customer shall have the right to examine the manner in which the Supplier supplies the Services (including the inspection and testing of the Deliverables at any time before delivery) and the Supplier shall provide free of charge such information and facilities as is reasonably required for these purposes. In this clause Services include planning or preliminary work in connection with the supply of Services.
- 5.9 If following such inspection or testing the Customer considers that the Services or the Deliverables do not conform or are unlikely to comply with the Supplier's undertakings in accordance with these Conditions, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
6. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Services and the Deliverables and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
6. **GOODS AND SERVICES**
- 6.1 Where any access to the Customer's premises is necessary in connection with the delivery or installation of Goods or the provision of Services the Supplier shall at all times observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises and comply with the reasonable instructions and requirements of the Customer.
- 6.2 Where any work by the Supplier is carried out on site at the Customer's premises, the Supplier shall comply with the Contractors' Code of Practice.
- 6.3 The Supplier shall have due regard to and comply with the policies stated in the Special Conditions.
7. **STATUTORY OBLIGATIONS AND OTHER REQUIREMENTS**
- 7.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this clause by all employees, agents or servants of the Supplier and all sub-contractors employed in the execution of the Contract.
- 7.2 In this clause 7, the following definitions apply:  
**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes or practice issued by the relevant government department concerning the legislation.  
**Prohibited Act:** the following constitute Prohibited Acts:  
(i) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:  
(A) induce that person to perform improperly a relevant function or activity; or  
(B) reward that person for improper performance of a relevant function or activity;  
(ii) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;  
(iii) committing any offence:  
(A) under the Bribery Act;  
(B) under legislation creating offences concerning fraudulent acts;  
(C) at common law concerning fraudulent acts relating to the Contract or any other contract with the Customer; or  
(D) defrauding, attempting to defraud or conspiring to defraud the Customer.
- Supplier Party:** the Supplier's agents and contractors, including each Sub-Contractor.  
**Supplier Personnel:** all employees, agents, consultants and contractors of the Supplier or of any Sub-Contractor.  
**Sub-Contract:** any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.  
**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Supplier.
- 7.3 **Prevention of Bribery:**  
(a) The Supplier shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with the Contract commit a Prohibited Act.  
(b) The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer's Director of Corporate Services before the Commencement Date.
- 7.4 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 7.5 If any breach of clause 7.3 is suspected or known, the Supplier must notify the Customer immediately and must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records, and any other relevant documentation.
- 7.6 The Customer may terminate the Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 7.3.
- 7.7 Any dispute relating to the interpretation of this clause 7; or the amount or value of any gift, consideration or commission, shall be determined by the Customer and its decision shall be final and conclusive.
8. **CUSTOMER REMEDIES**
- 8.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:  
(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;  
(b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;  
(c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party; where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and  
(e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

<p>8.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:</p> <p>(a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;</p> <p>(b) to terminate the Contract with immediate effect by giving written notice to the Supplier;</p> <p>(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);</p> <p>(d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;</p> <p>(e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and</p> <p>(f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.</p> <p>8.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.</p> <p>8.4 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.</p> <p><b>9. CUSTOMER'S OBLIGATIONS</b></p> <p>9.1 Subject to the Supplier complying with the Contract, the Customer shall:</p> <p>(a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and</p> <p>(b) provide such facilities and information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.</p> <p><b>10. CHARGES AND PAYMENT</b></p> <p>10.1 The price for the Goods:</p> <p>(a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date;</p> <p>(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing by the Customer; and</p> <p>(c) shall be paid in accordance with the Goods Payment Plan or as agreed in writing by the Customer and the Supplier.</p> <p>10.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges for Services shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and shall be paid in accordance with the Services Payment Plan or as agreed in writing by the Customer and the Supplier.</p> <p>10.3 Each invoice for the supply of the Goods and/or Services shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant contract number.</p> <p>10.4 The Customer shall pay all valid invoices raised in accordance with the relevant Payment Plan within 30 days of receipt of invoice.</p> <p>10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). The Customer shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of Goods and/or Services.</p> <p>10.6 If either party fails to pay any amount properly due and payable by it under the Contract, the other party shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the base rate for the time being of the Royal Bank of Scotland accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that are disputed in good faith.</p> <p>10.7 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under the Contract.</p> <p><b>11. INTELLECTUAL PROPERTY RIGHTS</b></p> <p>11.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under the Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.</p> <p>11.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.</p> <p>11.3 The Supplier shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.</p> <p>11.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 11.2.</p> <p>11.5 All Customer Materials are the exclusive property of the Customer.</p> <p>11.6 The Customer reserves the right to use any images in relation to the Services and the Deliverables for marketing and fundraising purposes generally.</p> <p><b>12. INDEMNITY</b></p> <p>12.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:</p> <p>(a) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;</p> <p>(b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;</p> <p>(c) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out</p>	<p>of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;</p> <p>(d) any costs incurred in repairing or making good any damage to the Customer's premises or any property belonging to the Customer caused by the presence, installation and/or removal of any equipment or materials used by the Supplier in the provision of the Services; and</p> <p>(e) any breach of the Contract by the Supplier.</p> <p>12.2 For the duration of the Contract and for a period of 1 year thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and (with an indemnity of not less than £1 million per incident) public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.</p> <p>12.3 This clause 12 shall survive termination of the Contract.</p> <p><b>13. CONFIDENTIALITY</b></p> <p>13.1 A party (<b>Receiving Party</b>) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (<b>Disclosing Party</b>), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.</p> <p>13.2 The Supplier acknowledges that the Customer is subject to the requirements of and may be obliged to disclose information in accordance with the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or the relevant government department in relation to such legislation and regulations (the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).</p> <p><b>14. TERMINATION</b></p> <p>14.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other if:</p> <p>(a) the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of receipt of notice in writing of the breach;</p> <p>(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;</p> <p>(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;</p> <p>(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;</p> <p>(e) the other party (being an individual) is the subject of a bankruptcy petition order;</p> <p>(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;</p> <p>(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);</p> <p>(h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;</p> <p>(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;</p> <p>(j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(i) (inclusive);</p> <p>(k) the other party suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;</p> <p>(l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or</p> <p>(m) it reasonably believes that any of the events mentioned above is about to occur to the other party's business and it notifies the other party of this belief.</p> <p>14.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:</p> <p>(a) by giving the Supplier one month's written notice; or</p> <p>(b) with immediate effect by giving written notice to the Supplier, in which case the Customer shall pay the Supplier fair and reasonable compensation:</p> <p>(i) (in respect of the purchase of Goods), for Goods supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Customer;</p> <p>(ii) (in respect of the purchase of Services) commensurate with the Services properly performed and expenses incurred or to be incurred that are rechargeable under the Contract and cannot be recovered or mitigated by the Supplier as at the date of termination.</p> <p>14.3 Where advance payments have already been paid to the Supplier under the Contract and such payments exceed the amount properly due to the Supplier for Goods and Services delivered and any compensation payable under clause 14.2(b) as at the date of termination, any such excess shall be promptly refunded to the Customer by the Supplier.</p> <p>14.4 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of</p>	<p>the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.</p> <p><b>15. CONSEQUENCES OF TERMINATION</b></p> <p>15.1 On termination of the Contract or any part of it for any reason:</p> <p>(a) where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;</p> <p>(b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and</p> <p>(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.</p> <p><b>16. GENERAL</b></p> <p>16.1 The Supplier may not refer to the Customer or the engagement under the Contract in any advertisement or publicity without the prior written consent of the Customer.</p> <p>16.2 In providing the Services and carrying out its obligations under the Contract, the Supplier will, and shall ensure that all key personnel will, not bring the Customer, its name or logos into disrepute in any way.</p> <p>16.3 The Supplier shall not use the Customer's logo(s) or trade mark(s) without the prior written consent of the Customer.</p> <p>16.4 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services, the Customer shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to the Supplier.</p> <p>16.5 Audit</p> <p>(a) The Supplier shall keep and maintain until 6 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 supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records and processes as may be requested by the Customer in connection with the Contract.</p> <p>(b) The Supplier shall permit duly authorised representatives of the National Audit Office and/or the Comptroller and Auditor General access free of charge to all such records, documents and other information as they may reasonably require for the purposes of any audit of the Customer and any examination into the economy, efficiency and effectiveness with which the Customer has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.</p> <p>16.6 Assignment and subcontracting: The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer. The Customer may at any time assign, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.</p> <p>16.7 Notices: Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid second-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.</p> <p>16.8 Waiver and cumulative remedies:</p> <p>(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.</p> <p>(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.</p> <p>16.9 Severance: If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.</p> <p>16.10 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.</p> <p>16.11 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.</p> <p>16.12 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing by the Customer.</p> <p>16.13 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.</p>
--	--	--