

# Conditions of Contract

## 1. DEFINITIONS AND INTERPRETATION

1.1 In the Contract, the words below shall have the meanings next to them unless the context requires otherwise:

**All Risks Insurance** means insurance which provides cover against any physical loss or damage to work executed and the materials or goods intended for the Works and against the reasonable cost of removal and disposing of debris and any shoring and propping of the Works which results from such physical loss or damage.

**Employer** means Cheltenham Borough Council of Municipal Offices, Promenade, Cheltenham, Gloucestershire, GL50 1PP.

**Bribery Laws** means the Bribery Act 2010 and all other applicable UK Legislation, regulations and codes in relation to bribery or corruption in any other relevant jurisdiction.

**Commencement Date** means the date upon which the Works shall be commenced by the Contractor subject to the terms of the Contract, as stated in the Purchase Order.

**Completion Date** means the date targeted for Practical Completion, as stated in the Purchase Order.

**Conditions of Contract** means these conditions of contract.

**Contract** means the contract between the Employer and the Contractor consisting of these Conditions of Contract, Preliminaries, the Request for Quote, the Quote, the Purchase Order and any other documents (or parts thereof) specified in the Request for Quote.

**Contractor** means the party described as such in the Purchase Order.

**Contract Price** means the price of Works to be provided by the Contractor, as stated in the Purchase Order or such other sum as becomes payable under this Contract.

**Data Protection Legislation** means (i) The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time, (ii) The Data Protection Act 2018 to the extent that it relates to Processing of Personal Data and privacy, (iii) all applicable Laws relating to Personal Data and privacy.

**DBS** means a Disclosure and Barring Service check that provides access to details of spent and unspent criminal convictions to

employers and organisations engaging volunteers in order to assist them to assess the suitability of an individual for work which involves a position of trust, including work with children and vulnerable adults.

<b>Highway Authority</b>	means the name given to a body responsible for the administration of public roads.
<b>Intellectual Property Rights</b>	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Materials</b>	means all drawings, calculations, specifications and/or other documents produced in relation to the Works and any designs contained in them.
<b>Party</b>	means either party to this Contract and parties means both of them.
<b>Practical Completion</b>	means the practical completion of the Works as certified by the Employer under clause 3.4.
<b>Personal Data and Processor</b>	have the meanings as set out in the Data Protection Legislation
<b>Purchase Order</b>	means the purchase order issued by the Employer for the Works.
<b>Quote</b>	means the documents setting out the Employer's requirements and the submission from the Contractor, including any risk assessments and method statements, in response to the Request for Quote.
<b>Request for Quote</b>	means the specification or brief and instructions sent out by the Employer offering the Contractor the opportunity to submit a quote for the Works.
<b>Site</b>	means the location at which the Works are to be provided, as stated in the Purchase Order.
<b>Specified Perils</b>	Fire, lightning, explosion, storm, flood, scape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil

commotion, but excluding Excepted Risks.

**Variation** means an addition to, omission from, or other change in the Works or the manner in which they are to be carried out

**Working Day** means Monday to Friday, excluding any public holidays in England and Wales.

**Works** means the works to be provided by the Contractor to the Employer as set out in the Request for Quote and, where applicable, the Purchase Order.

**Works Insurance Policy** means the policy covering the Works, materials and goods to be effected and maintained under clause 9

## **2. THE WORKS**

2.1 The Contractor is deemed to have:

2.1.1 inspected the Site before submitting the Quote so as to have understood the nature and extent of the Works to be carried out; and

2.1.2 satisfied themselves in relation to all matters connected with the Works and the Site.

2.2 The Contractor shall exercise in the performance of his obligations under the Contract all reasonable skill, care and diligence which may be expected of a contractor experienced in carrying out work of the size, scope, complexity and purpose of the Works.

2.3 The Contractor shall carry out and complete the Works in accordance with the Contract using good quality materials (including fixtures) supplied in accordance with the Contract and any drawings and/or specifications provided to the Contractor by the Employer as part of the Contract.

2.4 Notwithstanding any other provision of the Contract, the Contractor hereby warrants that the Works and all goods and/or materials used in the Works shall be fit for their intended use and shall comply with the requirements of all applicable laws, regulations, codes of practice and the like as at the Completion Date.

2.5.1 The Employer may, without invalidating this Contract, issue instructions requiring a Variation.

2.5.2 The Employer and the Contractor shall endeavour to agree a change to the Contract Price prior to the Contractor carrying out the Variation.

2.5.3 Failing agreement under clause 2.5.2, any instructions for a Variation and any matters that are treated as a Variation, shall be valued by the Employer on a fair and reasonable basis using any relevant prices in the Quote.

## **3. COMMENCEMENT AND COMPLETION**

3.1 The Contractor shall begin the Works on the Commencement Date unless the Employer shall otherwise instruct.

- 3.2 The Contractor will carry out the Works diligently and in such order, manner and time as the Employer may reasonably request so as to ensure Practical Completion by Completion Date.
- 3.3 If it becomes apparent that the Works will not be completed by the Completion Date and the reason for the delay is outside the Contractor's control, the Contractor shall inform the Employer and the Employer shall give such extension of time as may be reasonable and notify the Contractor.
- 3.4 The Employer shall certify the date when, in their opinion, the Works have reached Practical Completion.

#### **4. ACCESS**

- 4.1 The Employer shall grant to the Contractor a non-exclusive licence to enter and occupy the Site for such periods and at such times as may be necessary to enable the Contractor to perform his obligations under the Contract.
- 4.2 The Employer and others authorised by them shall have the right of access to the Site and to the Works at all times.

#### **5. DEFECTS**

- 5.1 During the Works, the Employer may inspect the Works at any time and require the removal and/or remediation of any work or materials or goods not in accordance with the Contractor's obligations under the Contract.
- 5.2 Pending completion of the Works, the Contractor shall ensure that all reasonable safety and other measures are taken to prevent damage and/or injury, minimum nuisance, and/or inconvenience and/or disturbance to owners and/or occupiers of the Site and/or adjoining properties and/or land and to any other persons employed by the Employer at the Site.
- 5.3 Any defects, excessive shrinkages or other faults which appear within twelve months of the date of Practical Completion and are due to the materials or workmanship not being in accordance with the Contract shall be made good by the Contractor entirely at his own cost within ten (10) working days of being notified unless the Employer shall otherwise instruct.
- 5.4 In the event of failure to comply with its obligations as noted in this clause 5, the Employer shall be entitled to employ others to rectify such defects and the Contractor shall reimburse to the Employer all costs incurred by the Employer.

#### **6. PAYMENT**

- 6.1 In consideration of the satisfactory performance of the Works, the Employer agree to pay the Contractor the Contract Price.
- 6.2 The Contractor acknowledges that the Contract Price takes full account of all works necessary to carry out the Works in accordance with the Contract, and the Contract Price shall not be adjusted except in accordance with the express provisions of the Contract.
- 6.3 Payment of the Contract Price shall be made in accordance with Part II of the Housing Grants, Construction and Regeneration Act 1996 and legislation made thereunder against monthly

applications from the Commencement Date for the value of that part of the Works properly carried out and completed.

## **7. LEGISLATION**

- 7.1 The Contractor shall comply with the requirements of all relevant Acts of Parliament, and other regulations or codes of practice made under any Act of Parliament, and the regulations and bye-laws of any local authority, national or public utility company or other authority affected by the Works, or with whose system any installations on Site are or will be connected, including but not limited to all applicable current health and safety and environmental legislation and the Construction (Design and Management) Regulations 2015 as amended from time to time (pursuant to which the Contractor shall act as principal contractor and principal designer unless the Employer confirms otherwise in writing).
- 7.2 The Contractor shall obtain every licence, permission or authority required for the execution of the Works and shall pay the fees or charges payable by law under such Acts, regulations and bye-laws in respect of the Works, as described in clause 7.1.
- 7.3 If the Contractor finds any divergence between the statutory requirements referred to in clause 7.1 and the Contract, they shall immediately give the Employer a written notice specifying the divergence.

## **8. INDEMNITY AND INSURANCE TO PERSONS AND PROPERTY OTHER THAN THE WORKS**

- 8.1 The Contractor shall indemnify and keep indemnified the Employer, against all actions, claims, demands, costs and expenses incurred by or made against the Employer, its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.
- 8.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in clause 8.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Employer), the indemnity contained in clause 8.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Employer.
- 8.3 The Contractor shall effect and have in force and shall require any sub-contractor to have in force:
- 8.3.1 employer's liability insurance and public liability insurance in a sum of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of one event; and
- 8.3.2 Where required in the Purchase Order professional indemnity insurance cover in a sum of not less than £1,000,000 (one million pounds), or such other amount as the Employer may require, during the Contract period and for 6 years to cover its liability to the Employer under this Contract.

## **9. INSURANCE OF THE WORKS**

### **WHERE WORKS TO PROPERTY ALREADY INSURED:**

9.1 The Employer shall effect and maintain:

9.1.1 A Joint Names Policy in respect of the existing structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;

9.1.2 A Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, to cover professional fees

And shall maintain such Joint Names Policies up to and including the date of issue of the Practical Completion certificate or, if earlier, the date of termination of the Contractor's employment.

### **WHERE WORKS TO PROPERTY/LAND NOT INSURED:**

9.2 The Contractor shall effect and maintain All Risks Insurance for the full reinstatement value of the Works and shall maintain such insurance up to and including the date of Practical Completion or, if earlier, the date of termination of the Contractor's employment.

9.3 If during the carrying out of the Works any loss or damage affecting any executed Works or materials or goods intended for the Works is occasioned by any of the risks covered by the Works Insurance Policy or there is any loss of or damage or any kind to any existing structure or its contents, the Contractor shall forthwith notify the Council.

9.4 Where loss or damage affecting the executed Works or materials or goods intended for the Works is occasioned by any risk covered by the Works Insurance Policy, the Contractor, after any inspection required by the insurances under that policy, shall and with due diligence restore the damaged work, replace or repair any lost or damaged materials or goods, remove and dispose of any debris (collectively known as the reinstatement works) and proceed with carrying out and completion of the Works.

9.5 In respect of the reinstatement works, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy

## **10. EVIDENCE OF INSURANCES**

10.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover, or is responsible for ensuring that it is effected and maintained, that Party shall within 7 days of a request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

10.2 If the Contractor fails to supply such evidence, the Employer shall be at liberty to effect such insurance cover as they deem necessary and to recover the cost from the Contractor on demand. Payment of the cost shall be due to the Employer on the date of the demand, and the final date for payment by the Contractor shall be 14 days after the date of the demand.

## **11. COPYRIGHT**

- 11.1 The Contractor, with full title guarantee, grants to the Employer an irrevocable perpetual royalty-free non-exclusive licence to use, reproduce and transmit any or all of the material (prepared by the Contractor or on the Contractor's behalf) for any purpose whatsoever connected with the Works including (without limitation) the design, construction, re-construction, execution, completion, maintenance, use, letting, occupation, management, sale, promotion, advertisement, alteration, modification, refurbishment, re-development, reinstatement and/or repair of the Works and/or the Site. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Contractor's engagement under the Contract, the Intellectual Property Rights in the Material (prepared by the Contractor or on the Contractor's behalf) shall remain vested in the Contractor. The Contractor shall not, however, be liable for the consequences of any use by the Employer of the Material for any purpose other than that for which they were prepared.

## **12. TRESPASS AND NUISANCE**

- 12.1 The Contractor shall take all reasonable precautions to prevent:
- 12.1.1 trespass on Site; and
  - 12.1.2 nuisance or inconvenience to the owners, tenants or occupiers of adjoining or neighbouring premises and to the public generally.

## **13. DAMAGE TO ADJOINING PROPERTY**

- 13.1 The Contractor shall take all reasonable and proper precautions to avoid damage to any adjoining or neighbouring premises during the execution of the Works. Where shoring and/or works to adjoining premises is necessary in the reasonable opinion of the Employer, the Contractor or the local authority, such work shall be carried out by the Contractor to the satisfaction of the local authority and the Employer.
- 13.2 The Contractor shall maintain and protect public property including roads, footpaths and footways and the property of public utility companies and make good any damage thereto.

## **14. OWNERSHIP OF GOODS AND/OR MATERIALS**

- 14.1 Where materials or goods intended for the Works are outside of the Site, the Contractor shall mark the materials and goods as for this Contract
- 14.2 Whatever title the Contractor has to all materials and goods intended for the Works and which are outside of the Site passes the Employer if the Contractor has marked the relevant goods or materials as for this Contract.
- 14.3 Whatever title the Contractor has to the all materials and goods intended for the Works shall pass to the Employer once they have been brought onto the Site.

## **15. ASSIGNMENT AND SUB-LETTING**

- 15.1 The Contractor shall not assign the Works or any parts thereof or any benefit or interest in the Contract without the consent of the Employer.

## **16. TERMINATION OF THE CONTRACT BY THE CONTRACTOR**

16.1 The Contractor may at any time upon at least ten (10) Working Days' prior notice in writing terminate the Contract in the event that the Employer commits a material breach of his obligations under the Contract which the Employer shall fail to remedy after receiving a 28 (twenty eight) day written notice from the Contractor specifying the breach and requiring its remedy.

## **17. TERMINATION OF THE CONTRACT BY THE EMPLOYER**

17.1 The Employer may at any time by at least five (5) days' prior notice in writing to the Contractor terminate the Contractor's engagement under the Contract and/or bring to an end the Works or any part or parts thereof.

17.2 In such event as described at clause 17.1:

17.2.1 the Employer shall pay to the Contractor a fair and reasonable proportion of the Contract Price having regard to the value of the Works completed at the date of such termination and at the Employer's discretion the demonstrated cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay and can prove ownership of at the date of termination; and

17.2.2 the Contractor shall immediately secure and protect the Works and give up possession of the Site.

17.3 Termination by the Employer under this clause 17 shall be without prejudice to any other right or remedy of either party in respect of anything done by the other before termination.

## **18. CLEARANCE OF THE SITE**

18.1 On the completion of the Works, the Contractor shall clear away and remove from the Site all plant, machinery, surplus material, rubbish and temporary works of every kind and leave the whole of the Site clean and in a workmanlike condition to the satisfaction of the Employer. The Contractor shall make good at his own cost all damage to buildings, walls, fences, gates, roads, pavings, grass areas and gardens caused by the execution of the Works.

## **19. FACILITIES FOR OTHER WORKS**

19.1 Unless the Employer instructs otherwise, the Contractor will not have sole possession of the Site during the Works. If sole possession of the Site is granted to the Contractor, the Contractor will, without liability for the safety of such persons, by prior arrangement with the Employer allow reasonable facilities for the execution upon the Site by any other persons of work not included in the Contract.

## **20. EQUALITY AND NON-DISCRIMINATION**

20.1 The Contractor agrees to comply with the Equality Act 2010 including any codes of practice issued thereunder and to perform the Contract in a non-discriminatory manner.

20.2 The Contractor agrees to assist the Employer to meet its responsibility to monitor the equality of the provision of any services provided by the Employer. The Employer may require the



Contractor to complete a questionnaire and/or provide information to the Employer on the extent and quality of the Contractor equalities and diversity policies and practice.

- 20.3 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of the protected characteristics.
- 20.4 The Contractor shall notify the Employer forthwith in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor in relation to the breach of the Equality Act 2010.
- 20.5 The Contractor shall indemnify the Employer in respect of all costs, claims and demands arising from a third party claim resulting from the Contractor's obligations under this clause 20.
- 20.6 If the Contractor fails to meet the required standards set out in the above legislation or codes of practice and after having been given the opportunity to improve the Employer may take further action, including the termination of the Contract.

## **21. ENVIRONMENTAL**

- 21.1 The Contractor shall in its provision of the service use working methods, equipment, materials and consumables, which minimise environmental damage. In particular the Contractor shall ensure that it fully complies with the environmental obligations laid down in the Employer's environmental policy, that it is familiar with the Employer's environmental policy supplied with the Contract and that it will support and assist the Employer in meeting the aims laid down in it.

## **22. DATA PROTECTION**

- 22.1 Both parties will comply with the applicable requirements of the Data Protection Legislation
- 22.2 The Contractor shall only process Personal Data for the purposes of complying with and for the duration of this agreement, unless the Contractor is permitted or required to keep Personal Data for a longer period by law. Both parties shall ensure that they each hold a record of processing as required by the Data Protection legislation.
- 22.3 Where the Contractor is acting as a Processor, the Contractor shall:
- act only on the Employer's written instructions;
  - have in place appropriate technical and organisational security measures appropriate to the processing;
  - ensure any staff who have access to the Personal Data are obliged to keep it confidential;
  - assist the Employer to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
  - assist the Employer (if requested) with respect to security, breach notifications, impact assessments and any investigations by a supervisory Employer;
  - notify the Employer without undue delay in the event of a data security breach and assist the Council with any investigations;
  - maintain and keep up to date a data processing register;
  - delete or return all personal data to the Employer, as requested, at the end of the agreement; and

- submit to audits and inspections and provide the Employer with whatever information it needs to ensure that all parties comply with their obligations under the Data Protection Legislation

22.4 The Contractor shall not appoint a third-party sub-processor without the Employer's prior written consent and ensure that any third-party processor enters into an agreement with the same or substantially similar terms in relation to the Data Protection Legislation.

22.5 If this agreement involves or requires a transfer of any Personal Data from one country to a country outside the country of origin and if required by applicable law, the Contractor will enter into a data transfer agreement that is consistent with the requirements of applicable law and ensures that:

22.5.1 the individuals have enforceable rights and effective legal remedies in relation to any transferred Personal Data; and

22.5.2 the Contractor has ensured adequate levels of protection in relation to any Personal Data that is transferred.

22.6 The Contractor shall indemnify the Employer in respect of all costs, claims and demands arising from a third party claim resulting from the breach of the Contractor's obligations under this clause 22.

22.7 Subject to clause 23 below the Contractor agrees to take reasonable steps to keep confidential information relating to the Employer which comes into the Contractor's possession and continue to maintain such confidentiality notwithstanding the termination of the Contract save such information that falls within the public domain.

## **23. FREEDOM OF INFORMATION/ENVIRONMENTAL INFORMATION REGULATIONS**

23.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of the Contract:

23.1.1 the Employer shall be entitled to publish and/or release any and all terms and conditions of the Contract, the contents of any documents and/or information relating to the formation of the Contract under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004; and

23.1.2 nothing contained in the Contract shall prevent the Employer from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004 any term and conditions or information contained in or relating to the formation of the Contract.

23.2 The Contractor shall:

23.2.1 at no cost to the Employer co-operate with the Employer and supply to it all necessary information and documentation required in connection with any request received by the Employer under the said legislation.

23.2.2 supply all such information and documentation at no cost to the Employer and within seven days of receipt of any request.

- 23.2.3 not publish or otherwise disclose any information contained in the Contract or in any negotiations leading to it without the Employer's previous written consent unless the Contractor is bound to publish and/or disclose such information under the said legislation and such information is not exempt from such disclosure and/or publication under the provisions of the said legislation.

## **24. PREVENTION OF BRIBERY**

- 24.1 The Employer may terminate the Contract and recover any losses if the Contractor, its employees, directors, agents, representatives or anyone acting on the Contractor's behalf do any of the following things:
- 24.1.1 offers, offered, promised or gave a bribe (as defined by the Bribery Act 2010) to the Employer or any of its employees or members whether prior to or after the date of the Contract concerning the negotiation, the entering into, the terms and conditions of or the performance of the Contract (even if the Contractor does not know what has been done); or
- 24.1.2 commit any fraud in connection with this or any other Employer contract whether alone or in conjunction with Employer members of employees.
- 24.2 The Contractor shall comply with the Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws, prevent bribery and use all reasonable endeavours to ensure that:
- 24.2.1 it complies with any Employer policies on bribery and corruption; and
- 24.2.2 all of the Contractor's employees, directors, agents, representatives or anyone associated or acting on the Contractor's behalf involved in performing the Contract so comply.

The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and all documents published under it.

## **25. DISPUTES**

- 25.1 If any dispute or difference shall arise between the parties at any time under out of or in connection with the Contract and/or the Works then subject to either party's statutory right to refer the matter to adjudication, the parties, acting by the persons with day to day responsibility for managing this Contract, shall attempt in good faith to resolve the dispute.
- 25.2 If the dispute is not resolved within a reasonable period by the persons referred to in clause 24.2 then the dispute shall be referred to the Employer's Chief Executive (or such senior officer nominated by the Employer) and the Contractor's Managing Director (or such other director or senior employee nominated by the Contractor) who shall attempt in good faith to resolve it.
- 25.3 If the dispute is not resolved by those persons referred to in clause 24.2 then the parties may refer any such dispute or difference to the jurisdiction of the English courts subject to either party's statutory right to refer the matter to adjudication.

## **26. MISCELLANEOUS**

- 26.1 Amendments to the Contract shall be binding only if in writing and signed by a duly authorised representative of both the Employer and the Contractor.

26.2 The Contractor acknowledges that it shall not have exclusive possession of the Site unless otherwise instructed by the Council.

## **27. NOTICES**

27.1 Any notice given under or pursuant to the Contract may be delivered by hand or sent by post or by any next working day service or transmitted by facsimile transmission to the address or facsimile number of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor.

27.2 any notice shall be deemed to have been received;

(a) if delivered by hand, on signature of a delivery receipt

(b) if sent by pre-paid first class post or other next Working Day on the second Working Day after posting or at the time recorded by the delivery service

(c) if sent by fax, at 10.00 a.m. on the next Working Day after transmission

(d) if sent by Document Exchange, the second Working Day after being put into the Document Exchange

27.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27.4 Except as expressly provided in this Contract a notice given under this Contract is not valid if sent by e-mail unless the parties have previously agreed in writing to accept service by e-mail. If service by e-mail is agreed, then the following shall apply;

(a) an e-mail shall be deemed delivered at 10:00am the next Working Day unless an error message or 'out of office' message is received by the sender.

b) Notices shall only be accepted if sent to the e-mail address given by a party to the other as being the designated e-mail address for the service of notices.

27.5 If the parties agree to service of notice by e-mail, they do not agree to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution unless specifically stated.

## **28. LAW AND JURISDICTION**

28.1 The Contract shall be governed by, and construed in accordance with English law.

## **29. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

29.1 Notwithstanding any other provisions of the Contract nothing in the Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

**30. WAIVER**

- 30.1 The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 30.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 30.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

**31. SEVERABILITY**

- 31.1 If any provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision 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.

**32. ENTIRE AGREEMENT**

- 32.1 The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.