

Terms and Conditions of Contract for Services

I Interpretation

I.1 The following definitions and rules of interpretation apply in the Contract (unless the context requires otherwise):

Business Day: a day, other than a Saturday, Sunday or public holiday in England.

Commercially Sensitive Information: the information listed in the Quotation comprising the information of a commercially sensitive nature relating to the pricing of the Services, the Contractor's intellectual property rights or the Contractor's business operations which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss.

Confidential Information: means any information (however recorded or preserved) disclosed by a party to the other party in connection with this Contract, which is:

- (a) information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business affairs, customers, suppliers or plans of the disclosing party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) information developed by the parties in the course of providing the Services under this Contract;
- (c) Commercially Sensitive Information.

Contract: means the agreement between the Council and the Contractor incorporating the RFQ, the Quotation, the Order and these terms and conditions.

Contractor: the consultant, person, firm or company to whom the Contract is issued

Council: [Cotswold District Council] [Forest of Dean District Council] [West Oxfordshire District Council] [Publica Group (Support) Limited]

Council Property: all documents, books, materials, records, correspondence and information (on whatever media and wherever located) relating to the business of the Council or its customers and business contacts, and any equipment, keys, hardware or software provided for the Contractor's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Contractor on the Council's or the Contractor's computer systems or other electronic equipment during the Engagement and relating to the provision of the Services.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018, and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party and **Controller, Personal Data, Processing, Processor** shall be interpreted as defined in the Data Protection Legislation.

Deliverables: any outputs of the Services and any other documents or materials provided by the Contractor to the Council as more particularly described in the RFQ and the Quotation and any other documents and materials provided by the Contractor to the Council in relation to the Services .

Engagement: the engagement of the Contractor by the Council on the terms of the Contract.

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, moral rights, trademarks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, 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.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Contractor in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Order: the purchase order forming part of this Contract

Quotation: the Contractor's response to the RFQ.

RFQ: the Request for Quotation or invitation to tender, and any other documents (or parts thereof) specified therein, issued by the Council setting out the Council's requirements in respect of the Services

Services: the services or project to be provided by the Contractor as described in the RFQ and where applicable the Order including any Deliverables.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

The headings in the Contract are inserted for convenience only and shall not affect its construction.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2 Provision of Services

The Council shall engage the Contractor and the Contractor shall provide the Services in accordance with the Contract.

3 Time of Performance

- 3.1 The Contractor shall perform the Services in accordance with the timescales set out in the RFQ.
- 3.2 During the Engagement the Council may:
- (a) by written notice require the Contractor to execute the Services in a particular order
 - (b) require the Contractor to submit detailed programmes of work and progress reports for the Services.
- 3.3 If the Contractor fails to deliver the Services within the time specified in the RFQ the Council shall not be obliged to accept or pay for the Services and may terminate the Contract with immediate effect without prejudice to any other rights or remedies which the Council may have hereunder.

4 Duties and Obligations

- 4.1 The Contractor shall complete the Services, including any Deliverables with reasonable skill, care and diligence in accordance with the Contract.
- 4.2 The Contractor shall provide the Council with such information and reports as it may reasonably require in connection with matters relating to the provision of the Services, including the Deliverables (if any) at such intervals and in such form as the Council may from time to time require.
- 4.3 Unless specifically authorised to do so by the Council in writing, the Contractor shall not:
- (a) incur any expenditure in the name of or for the account of the Council; or
 - (b) hold itself out as having authority to bind the Council.
- 4.4 The Contractor shall comply with all professional standards of safety and comply with the Council's health and safety procedures from time to time in force at any Council premises where the Services are provided and report to the Council any unsafe working conditions or practices at such premises.

5 Equality/Human Rights

- 5.1 The Contractor shall comply with the Equality Act 2010 including any codes of practice issued thereunder and shall assist the Council to monitor the equality of the provision of the Services which may require the Contractor to complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor's equalities and diversity policies and practice.
- 5.2 The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any equalities investigation or proceedings brought against the Contractor.
- 5.3 The Contractor shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Contractor were a public body (as defined in the Human Rights Act 1998)..

- 5.4 The Contractor shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998
- 5.5 If the Contractor fails to meet its obligations set out in this clause and after having been given the opportunity to improve the Council may terminate the Contract.
- 5.6 The Contractor shall indemnify the Council in respect of all costs, claims and demands arising from a third party claim resulting from the Contractor's failure to comply with its obligations under this clause

6 Prevention of Bribery

- 6.1 The Contractor shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - (b) comply with any relevant industry code on anti-bribery as the relevant industry body may update them from time to time;
 - (c) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract;
 - (d) ensure that all persons associated with the Contractor or other persons who are performing services in connection with the Contract comply with this clause 6; and
 - (e) ensure that it has in place adequate procedures to ensure compliance with this clause 6.
- 6.2 The expressions "adequate procedures" and "associated" in clause 6 shall be construed in accordance with the Bribery Act 2010 and all documents published under it.
- 6.3 The Council 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:.
- (a) fail to comply with clause 6.
 - (b) offer, promise or give a bribe (as defined by the Bribery Act 2010) to the Council or any of its employees or members whether prior to or after the date of this Contract concerning the negotiation, the entering into, the terms and conditions of or the performance of this Contract (even if the Contractor does not know what has been done); or
 - (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members or employees

7 Anti-slavery and human trafficking

- 7.1 In performing its obligations under the agreement, the Contractor shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force (Anti-Slavery Laws) including the Modern Slavery Act 2015 and any anti-slavery policy of the Council of which the Contractor has been notified;
- (b) include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause; and
- (c) notify the Council as soon as it becomes aware of any actual or suspected breach of this clause 7;

7.2 The Contractor represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

8 Environmental

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 is familiar with and fully complies with the environmental obligations laid down in the Council's [(for WOX) Climate Change Strategy and Carbon Action Plan] [(for CDC) Climate Emergency Strategy] [(for FDDC) Climate Emergency Strategy and Action Plan] and available on the Council's website, and that it will support and assist the Council in meeting the aims laid down in it (where appropriate).

9 Price, Fees, and Payment

- 9.1 Payment shall be due in accordance with the Contract provided that the Services have been supplied in accordance with the Contract to the Council's satisfaction and after receipt of detailed invoices showing VAT where applicable.
- 9.2 Where the Council has agreed to pay the Contractor fees on a time spent basis rather than a fixed contract price:
 - (a) the Council shall pay to the Contractor the fees at the rate specified in the Quotation (or the Order if a different rate is specified therein); and
 - (b) the Contractor shall bear their own expenses incurred except for any expenses previously agreed between the parties and confirmed in writing by the Council.
- 9.3 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with the Council
- 9.4 Payment in full or in part of the fees claimed under clause 9 shall be without prejudice to any claims or rights of the Council against the Contractor in respect of the provision of the Services.

10 Contractor's Personnel

- 10.1 If the Council gives the Contractor notice that any person is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Council the Contractor shall replace any person removed under this clause 10 with another suitably qualified person and procure that any pass allowing access to Council premises issued to the person removed is surrendered. The decision of the Council shall be final and conclusive.
- 10.2 If required by the Council, the Contractor shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.
- 10.3 The Contractor shall bear the cost of any notice, instruction or decision of the Council under this condition.

11 Assignment and Sub-Contracting

- 11.1 The Contractor shall not assign, novate or sub-contract the whole or any part of this Contract without the Council's prior written permission.
- 11.2 The Council shall be entitled to novate, assign or subcontract this Contract or any part of it to any other body which substantially performs any of the functions that previously had been performed by the Council.

12 Confidential Information

- 12.1 Except to the extent set out in this clause or where disclosure is expressly permitted, each party shall treat the other party's Confidential Information as confidential; and not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 12.2 Clause 12.1 shall not apply where:
- (a) such disclosure is required by law; or
 - (b) such information was in the possession of the party making the disclosure without an obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligations of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than through breach of this Contract;
 - (e) such information was independently developed without access to the other party's Confidential Information
- 12.3 The Contractor shall not, and shall procure that any of its officers workers or agents do not, use any of the Council's Confidential Information received otherwise than for the purpose of providing the Services.

- 12.4 Nothing in this clause 12 shall prevent the Contractor (or any of its officers, employees, workers or agents) or the Council (or any of its officers, employees, workers or agents) from:
- (a) reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or
 - (b) doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
 - (c) whether required to or not, making a disclosure to, or cooperating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing); or
 - (d) complying with an order from a court or tribunal to disclose or give evidence; or
 - (e) making any other disclosure as required by law.

13 Publicity

The Contractor shall not, without prior written consent of the Council:

- 13.1 make any press announcements or publicise the Contract or its contents in any way; or
- 13.2 use the Council's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction

14 Data Protection

- 14.1 The Contractor will deliver effective and appropriate services having due regard to Data Protection principles and will comply with its duties under the Data Protection Legislation.
- 14.2 Where the Contractor processes data under this Contract, the Contractor and the Council acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor.
- 14.3 The scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of data subject are set out in the Data Processing Schedule below.
- 14.4 The Contractor shall, in relation to any Personal Data processed in connection with the Engagement:
 - (a) process that Personal Data only on written instructions of the Council;
 - (b) keep the Personal Data confidential;
 - (c) comply with the Council's data protection policy and data retention guidelines;

- (d) comply with the Council's reasonable instructions with respect to processing Personal Data
- (e) not transfer any Personal Data outside of the UK;
- (f) assist the Council in responding to any data subject access request at nil cost to the Council and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Council without undue delay on becoming aware of a Personal Data breach or communication which relates to the Council's or Contractor's compliance with the Data Protection Legislation;
- (h) at the written request of the Council, delete or return Personal Data (and any copies of the same) to the Council on termination of the Engagement unless required by the Data Protection Legislation to store the Personal Data; and
- (i) maintain complete and accurate records and information to demonstrate compliance with this clause 14.

14.5 The Contractor shall ensure that they have in place appropriate technical or organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.

14.6 Such measures may include, where appropriate:

- (a) pseudonymising and encrypting Personal Data;
- (b) ensuring confidentiality, integrity, availability and resilience of its systems and services;
- (c) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (d) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

14.7 The Council does not agree to the Contractor appointing any third party processor of Personal Data under the Contract.

14.8 The Contractor shall indemnify the Council for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the of the Data Protection Legislation and shall maintain in force full and comprehensive insurance policies.

15 Freedom of Information/Environmental Information Regulations

15.1 Notwithstanding anything to the contrary contained or implied in any documents or

negotiations leading to the formation of this Contract:

- (a) the Council shall be entitled to publish and/or release any and all terms or conditions of this Contract, the contents of any documents and/or information relating to the formation of this Contract under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004
- (b) nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004 any term or conditions or information contained in or relating to the formation of this Contract.

15.2 The Contractor shall:

- (a) co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the said legislation.
- (b) supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.

15.3 The Contractor shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council'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

16 Intellectual Property

16.1 Except to the extent that the Services incorporate designs furnished by the Council, the Contractor shall ensure that the provision of the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Contractor shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer as a result of such infringement.

16.2 All Intellectual Property Rights (including ownership and copyright):

- (a) furnished or made available to the Contractor by the Council; and
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract

are hereby assigned to and shall vest in the Council absolutely, and the Contractor shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Council use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor

shall not refer to the Council or the Contract in any advertisement without the Council's prior written consent.

- 16.3 The provisions of this Clause 16 shall apply during this Contract and after its termination howsoever arising.

17 Insurance and Liability

- 17.1 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, loss, liability, costs (including reasonable legal costs), damages or expenses incurred by or made against the Council, its servants or agents in respect of any losses or damage or personal injury (including death) which arises out of or in connection with the Contractor's breach or negligent performance or non-performance of this Contract.

- 17.2 The Contractor shall effect and have in force and shall require any sub-contractor to have in force:

- (a) employer's liability insurance and public liability insurance each in a sum of not less than £5,000,000 for any one occurrence or series of occurrences arising out of one event
- (b) professional indemnity insurance in a sum of not less than £1,000,000 during the Contract period and for 6 years thereafter to cover its liability to the Council under this Contract,
- (c) Any additional level or type of insurance cover in such a sum as specified in the RFQ

and, on request, shall provide to the Council copies of the policies together with satisfactory evidence of payment of premiums.

- 17.3 The Contractor shall, on request, notify the insurers of the Council's interest and shall cause the interest to be noted on the insurance policies.

- 17.4 The Contractor shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Contractor is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Contractor shall notify the Council without delay.

18 Termination

- 18.1 The Council may terminate the Contract with immediate effect with no liability to make any further payment to the Contractor (other than in respect of amounts accrued before the date of such termination) if at any time the Contractor:

- (a) commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so

- (b) commits repeated breach or non-observance of any of the provisions of the Contract or refuses or neglects to comply with any reasonable and lawful directions of the Council;
- (c) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- (d) is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services;
- (e) takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 18(1)(e)
- (f) (being an individual) dies or is incapacitated (including by reason of illness; accident or mental or physical incapacity) from providing the Services;
- (g) commits any breach of the Council's policies and procedures;

18.2 The rights of the Council under clause 18.1 are without prejudice to any other rights that it might have at law to terminate the Contract or to accept any breach of the Contract on the part of the Contractor as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

18.3 In addition to its rights of termination under paragraph 18.1, the Council shall be entitled to terminate this Contract by giving to the Contractor not less than three months' notice in writing to that effect.

18.4 Termination under paragraphs 18.1 or 18.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council and shall not affect the continued rights under any other condition or provision that either expressly or by implication has effect after termination.

18.5 Upon termination of the Contract otherwise than under clause 18.3 before the Services have been fully completed or delivered and without prejudice to any other of its rights the Council may complete the Services or have them completed by a third party and shall be entitled to deduct from any amount due to the Contractor (under the Contract or otherwise) the costs thereof incurred by the Council (including the Council's own costs). If this total cost to the Council exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by the Council from the Contractor.

19 Obligations on Termination

19.1 On the date of termination of the Contract the Contractor shall:

- (a) immediately deliver to the Council all Council Property created or held in relation to this Contract and original Confidential Information in their possession or under their control;
- (b) except where otherwise required under Clause 22 (Audit) and subject to the Council's data retention guidelines, irretrievably delete (to the extent technically and reasonably practicable) any information relating to the business of the Council stored on any media (including but not limited to any Confidential Information) and all matter derived from such sources which is in their possession or under their control outside the premises of the Council, and
- (c) provide a signed statement that they have complied fully with their obligations under this clause 19 together with such evidence of compliance as the Council may reasonably request.

20 Status

In carrying out the Services the relationship of the Contractor to the Council will be that of independent contractor and/or principal and nothing in the Contract shall render them an employee, worker, agent or partner of the Council and the Contractor shall not hold themselves out as such.

21 Force Majeure

A party shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from circumstances beyond its reasonable control and the time for performance shall be extended accordingly. If the period of delay or non-performance continues for longer than six weeks the party not affected may terminate the Contract by giving 30 days written notice to the affected party.

22 Audit

The Contractor shall keep and maintain for six (6) years after completion of provision of the Services under the Contract or its termination if sooner records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Council on a time charge basis. The Contractor shall on request afford the Council or its representatives such access to those records as may be required by the Council.

23 Notices

23.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) .
- (b) [sent by email to the following addresses (or an address substituted in writing by the party to be served):

(i) The Council: [ADDRESS].

(ii) The Contractor: [ADDRESS].

23.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or such earlier time that receipt of the notice can be shown to have occurred.
- (c) if sent by email, at the time of transmission.

23.3 If deemed receipt under clause 23.2 would occur outside 9.00am to 5.00pm on a Business Day (Business Hours), it shall be deferred until Business Hours resume.

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

24 Dispute resolution

24.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the representatives of the parties responsible for the management of the Contract shall attempt in good faith to resolve the Dispute;
- (b) if such representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director of the Council and a director of the Contractor who shall attempt in good faith to resolve it; and
- (c) if the Council's director and the Contractor's director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 60 days after the date of the ADR notice.

24.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 36 which clause shall apply at all times.

25 Entire Agreement

25.1 The Contract constitutes the entire agreement between the parties.

25.2 Each party acknowledges that in entering into the Contract it does not rely any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract, and agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

26 Waiver

26.1 The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

26.2 No waiver shall be effective unless it is communicated to the other party in writing.

26.3 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.

27 Severability

If any provision of the Contract is or becomes unlawful, invalid or unenforceable it shall be deemed deleted but the validity or enforceability of the remainder of the Contract shall not be affected.

28 Amendments and Variation

No amendment or variation of the Contract shall be effective unless it is in writing and signed by the parties.

29 Third Party Rights

Except as expressly provided elsewhere in the Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

30 Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract