



Isle of Man
Government

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**ISLE OF MAN GOVERNMENT
STANDARD TERMS AND CONDITIONS
FOR THE PURCHASE OF GOODS AND/OR SERVICES**

These terms and conditions apply to the purchase of all goods and/or services by the Department (as defined below) from suppliers where there is no written signed contract in place between the Department and the supplier (the "**Supplier**").

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions, the following definitions shall apply:

"Acceptance Conditions"	has the meaning set out in Condition 6.4;
"Business Days"	means Monday to Friday in each week but excluding bank holidays recognised in the Isle of Man;
"Charges"	means the charges payable by the Department for the supply of the Goods and/or Services as set out in the Purchase Order;
"Commencement Date"	has the meaning set out in Condition 2.2;
"Commercially Sensitive Information"	has the same meaning as is defined or described in the FOIA;
"Conditions"	means these terms and conditions as amended from time to time;
"Contract"	means the agreement between the Department and the Supplier for the purchase of Goods and/or Services into which these Conditions are incorporated and includes any Purchase Order;

"Data Protection Legislation"	means the Data Protection (Application of GDPR) Order 2018, the Data Protection (Application of LED) Order 2018 and any regulations made thereunder or any successor legislation as may be implemented in the Isle of Man during the term of the Contract pursuant to the Data Protection Act 2018
"Deliverables"	means the Goods and/or Services provided by the Supplier to the Department to include all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the provision of the Goods or Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
"Delivery Date"	means the date referred to within the Purchase Order;
"Delivery Location"	means the location referred to within the Purchase Order;
"Department"	means the Department, Statutory Board or other office (which has legal capacity to enter into the Contract) referred to in the Purchase Order;
"Department Materials"	has the meaning set out in Condition 3.3.9.
"Department's Premises"	means land or buildings occupied by the Department;
"Enactments"	means directives, statutes, regulations, orders, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it;
"FOIA"	means the Freedom of Information Act 2015;
"Goods"	means the goods (if any) purchased by the Department from the Supplier as described in the Specification the quantity of which is set out in the Purchase Order under the Contract
"Information"	has the same meaning as is defined or described in the FOIA;

"Intellectual Property Rights"

means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, 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 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;

"Parties"

means the Department and the Supplier;

"Price"

means the price payable by the Department to the Supplier in consideration of the supply of Goods and/or Services as set out in the Purchase Order, excluding Value Added Tax ("**VAT**");

"Purchase Order"

means the Department's Purchase Order for the supply of Goods and/or Services in whatever form it takes made between the Parties;

"Requests for Information"

means requests for Information received by the Department pursuant to the FOIA;

"Services"

means the services (if any) to be provided by the Supplier under the Contract as set out in the Specification;

"Specification"

means the Deliverables together with any further description or specification for the Goods and/or Services set out in the Purchase Order or agreed in writing by the Department and the Supplier;

"Staff"

means any person whether paid or unpaid engaged upon the provision of the Goods and/or Services on behalf of a Party;

"Supplier"

means the person or firm named in the relevant Purchase Order from whom the Department purchases the Goods and/or Services, which includes any person or firm to whom all or part of the Supplier's obligations are assigned pursuant to Condition 16;

"Timetable"

means the timetable (if any) as set out in the Purchase Order;

"Working Days" has the same meaning as is defined or described in the FOIA.

1.2. **Construction**

In these Conditions, the following rules apply:

- 1.2.1. A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. A reference to a party includes its successors or permitted assigns;
- 1.2.3. A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4. Any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5. A reference to **"writing"** or **"written"** includes e-mails;
- 1.2.6. Where the context so admits, the references to Goods and/or Services throughout these Conditions shall apply to Goods where the Contract is for the supply of Goods and Services where the Contract is for the supply of Services.

2. **BASIS OF CONTRACT**

- 2.1. The Purchase Order constitutes an offer by the Department to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2. The Purchase Order shall be deemed to be accepted on the earlier of:
 - 2.2.1. the Supplier issuing written acceptance of the Purchase Order; or
 - 2.2.2. any act by the Supplier consistent with fulfilling the Purchase Order,at which point and on which date the Contract shall come into existence and be deemed to be the commencement date of the Contract.
- 2.3. These 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.

3. **WARRANTIES AND REPRESENTATIONS**

- 3.1. The Supplier shall provide the Goods and/or Services to the Department in accordance with the terms of the Contract.

- 3.2. The Supplier shall meet any performance dates for the Services specified in the Timetable or notified to the Supplier by the Department.
- 3.3. In providing the Goods and/or Services, the Supplier shall:
 - 3.3.1. Co-operate with the Department in all matters relating to the provision of the Goods or Services, and comply with all instructions of the Department;
 - 3.3.2. Perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 3.3.3. Use staff who are suitably skilled, qualified 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;
 - 3.3.4. Ensure that the Goods and/or Services will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Department;
 - 3.3.5. Provide all equipment, tools and vehicles and such other items as are required to provide or deliver the Goods and/or Services;
 - 3.3.6. Use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used or transferred to the Department, will be free from defects in workmanship, installation and design;
 - 3.3.7. Obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - 3.3.8. Observe all health and safety rules and regulations and any other security requirements that apply at any of the Department's Premises;
 - 3.3.9. Hold all materials, equipment and tools, drawings, specifications and data supplied by the Department to the Supplier (Department Materials) in safe custody at its own risk, maintain the Department Materials in good condition until returned to the Department, and not dispose or use the Department Materials other than in accordance with the Department's written instructions or authorisation;
 - 3.3.10. Not do or omit to do anything which may cause the Department to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
 - 3.3.11. Comply with any other obligations set out in the Purchase Order.

- 3.4. In providing the Goods, the supplier warrants and represents that:
- 3.4.1. The Goods shall be free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Department; and
 - 3.4.2. The Goods shall conform in all respects with any sample approved by the Department; and
 - 3.4.3. The Goods shall be supplied by the Supplier in accordance with any handling, packing, packaging and labelling instructions given by the Department; and
 - 3.4.4. The Goods shall conform with the requirements of all relevant Enactments and with any applicable European standards or equivalent; and
 - 3.4.5. It has full, clear and unencumbered title to the Goods and the clear and unencumbered right, power and authority to sell, transfer and deliver all of the Goods to the Department; and
 - 3.4.6. It shall have in place a policy of insurance over the Goods until the Department has unconditionally accepted the Goods in the manner and on the terms prescribed by the Contract.
 - 3.4.7. In providing the Goods, the Supplier shall:
 - 3.4.7.1. Observe all health and safety rules and regulations and any other security requirements that apply at any of the Department's Premises;
 - 3.4.7.2. Comply with any other obligations set out in the Purchase Order.

4. DEPARTMENT REMEDIES

- 4.1. If the Supplier fails to provide the Goods and/or Services in accordance with the Timetable, the Department shall, without limiting its other rights or remedies, have one or more of the following rights:
- 4.1.1. To terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 4.1.2. To refuse to accept any subsequent delivery or provision of the Goods or performance of the Services which the Supplier attempts to make;
 - 4.1.3. To recover from the Supplier any costs incurred by the Department in obtaining substitute services from a third party;
 - 4.1.4. Where the Department has paid in advance for the Goods or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

- 4.1.5. To claim damages for any additional costs, loss or expenses incurred by the Department which are in any way attributable to the Supplier's failure to meet such dates.
- 4.2. These Conditions shall extend to any substituted or remedial Goods and/or Services provided by the Supplier.
- 4.3. The Department's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

5. DEPARTMENT'S OBLIGATIONS

The Department shall:

- 5.1. Provide the Supplier with reasonable access at reasonable times to the Department's Premises for the purpose of delivering the Goods and/or providing the Services;
- 5.2. Provide such information to the Supplier as the Supplier may reasonably request and the Department considers reasonably necessary for the purpose of delivering the Goods or providing the Services; and
- 5.3. Comply with any other obligations set out in the Purchase Order.

6. DELIVERY AND ACCEPTANCE OF GOODS

- 6.1. The Goods shall be delivered on the Delivery Date.
- 6.2. Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Department's Premises. Where the Goods are collected by the Department, the point of delivery shall be when the Goods are loaded on the Department's vehicle.
- 6.3. The Delivery Date or any other date and time agreed for delivery of the Goods shall be of the essence of the Contract and failure to deliver all of the Goods within the time promised or specified shall enable the Department (at the Department's option) to release itself from any obligation to accept and pay for the Goods and/or cancel all or part of the Contract, in either case without prejudice to the Department's other rights and remedies.
- 6.4. The Department shall not accepted or be deemed to have accepted the Goods until the Goods have been delivered to the Delivery Location and the Department has notified the Supplier in writing that the Goods are in complete compliance with the Contract (the "**Acceptance Conditions**").

7. PROPERTY AND RISK

Property and risk shall remain with the Supplier until the Acceptance Conditions are met.

8. CANCELLATION AND REJECTION OF GOODS

- 8.1. The Department may cancel the order for the Goods or for any part of the Goods which have not yet been delivered to the Department provided that any such cancellation is provided to the Supplier in writing.
- 8.2. The Department may reject any of the Goods which fail to conform to the approved sample or fail to meet the terms of the Contract. Such notice shall be given within a reasonable time after delivery to the Department of the Goods concerned. Any Goods rejected or returned by the Department shall be returned to the Supplier at the Supplier's risk and expense.
- 8.3. Notwithstanding having notified the Supplier in accordance with Condition 6.4 above that the Goods comply with the Acceptance Conditions the Department may nonetheless reject the Goods and make a claim for damages if the Department discovers within three (3) days that the Goods are not in complete compliance with the Contract.
- 8.4. If the Department rejects any of the Goods, the Department shall be entitled (without prejudice to its other rights and remedies) either:
 - 8.4.1. Promptly to have the Goods repaired by the Supplier or (as the Department shall elect) replaced by the Supplier with Goods which comply with the terms of the Contract and due delivery shall not be deemed to have taken place until such repair or replacement (subject to the Acceptance Conditions) has occurred and the Department has notified the Supplier in accordance with Condition 6.4 that the repaired or replaced Goods comply with the Acceptance Conditions; or
 - 8.4.2. To treat the Contract as discharged by the Supplier's breach and require refund from the Supplier in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Department in obtaining other goods in replacement.

9. GUARANTEE

The Supplier guarantees the Goods from Delivery for the period referred to in the Purchase Order and will remedy any defects occurring within that guarantee period as quickly as possible at no cost to the Department.

10. CHARGES AND PAYMENT

- 10.1. The Charges and/or Price for the Services and/or Goods shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and/or supply of Goods. Unless otherwise agreed in writing by the Department, the Charges and/or Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and/or supply of Goods.

- 10.2. The Supplier shall invoice the Department within thirty (30) days of completion of the Services and/or acceptance of the Goods by the Department. Each invoice shall include such supporting information required by the Department to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 10.3. In consideration of the supply of the Goods and/or Services by the Supplier, the Department shall pay the invoiced amounts within thirty (30) days of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 10.4. All amounts payable by the Department under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Department, the Department 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 Services at the same time as payment is due for the supply of the Services.
- 10.5. If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Isle of Man Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This Condition shall not apply to payments that the defaulting party disputes in good faith.
- 10.6. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Department to inspect such records at all reasonable times on request.
- 10.7. Where an invoice relates to the delivery of documentation, the Department shall be entitled to withhold payment of the same pending the delivery and acceptance of the documentation.
- 10.8. The Department may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Department against any liability of the Department to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 10.9. The Department shall be entitled to deduct from any payment due any sums recoverable from or payable by the Supplier.
- 10.10. With regard to Condition 10.2 above time shall be of the essence.

11. ACCOUNTS

- 11.1. The Supplier shall keep full and proper accounts, records and vouchers relating to all payments made to it by the Department including in respect of any expenditure reimbursed by the Department.
- 11.2. The Supplier shall ensure that such accounts, records and vouchers are retained by it for a period of six (6) years after completion of the Services and/or supply of Goods or termination of the Contract (whichever is later).
- 11.3. The Supplier shall permit the Department, acting by its employees or an independent auditor, on request and at all reasonable times to examine all such accounts, records and vouchers at the offices of the Supplier or at such other places as the Department shall reasonably direct, and to take copies of such accounts, records and vouchers and the Supplier shall provide the Department or its independent auditor with such explanations relating to those documents as the Department may request.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. In respect of any goods that are transferred to the Department 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 Department, it will have full and unrestricted rights to transfer all such items to the Department.
- 12.2. The Supplier assigns to the Department, 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.
- 12.3. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled.
- 12.4. The Supplier shall, promptly at the Department's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Department may from time to time require for the purpose of securing for the Department the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Department in accordance with Condition 12.2.
- 12.5. All Department Materials are the exclusive property of the Department.
- 12.6. Any Intellectual Property Rights required by the Contractor from the Department shall be deemed given for the duration of the supply of any Services.

13. CONFIDENTIALITY

- 13.1. A party (receiving party) 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 (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 13.2. The Supplier shall ensure that any information supplied by the Department is treated as confidential and not disclosed to any person other than the Department except as may be required by law.
- 13.3. The Supplier shall not without prior consultation with the Department seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Goods and/or Services and shall where reasonably practicable agree joint press releases with the Department.
- 13.4. This Condition 13 shall survive termination of the Contract.

14. COMPLIANCE WITH STATUTE AND OTHER REQUIREMENTS

- 14.1. The Supplier shall comply with all relevant Enactments in its performance of the Contract.
- 14.2. The Supplier shall comply with the Data Protection Legislation and in particular shall:
 - 14.2.1. Act only on the instructions of the Department when processing personal data (as defined in the Data Protection Legislation) received from the Department;
 - 14.2.2. Take all appropriate security measures to protect against any unauthorised or unlawful processing or accidental loss or destruction of or damage to such personal data;
 - 14.2.3. Provide the Department with all such information as the Department may reasonably require to satisfy itself that the Supplier is complying with these obligations;
 - 14.2.4. Permit the Department to carry out an audit for these purposes at premises belonging to or under the control of the Supplier;
 - 14.2.5. Comply with any Data Processing Agreement or Data Sharing Agreement made between the Department and the Supplier in respect of any personal data being processed (in accordance with the terms of the Data Protection Legislation); and

- 14.2.6. Return to the Department all such information at the expiry or earlier termination of the Contract.
- 14.3. The Supplier shall not in relation to the employment of Staff for the purposes of providing the Goods unlawfully discriminate and the Supplier shall have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and to provide good relations between different racial groups and shall where reasonably requested by the Department assess and monitor its policies and practices as to impact on the promotion of race equality and report on it to the Department.
- 14.4. The Supplier will ensure that it maintains effective whistle blowing policies whereby Staff may raise in confidence without fear of victimisation discrimination or disadvantage concerns about possible malpractice.
- 14.5. Whilst on Department Premises the Supplier shall ensure that Staff comply with the Department's safety policies and any amendments to them notified to the Supplier and with the proper requirements of the Department's safety officers.

15. INDEMNITY AND INSURANCE

- 15.1. The Supplier shall at all times maintain insurance cover with a reputable company of the types and levels referred to in the Purchase Order at the end of the Contract.
- 15.2. The Supplier shall supply to the Department annually and at any other time within fourteen (14) days of request evidence satisfactory to the Department that the Supplier has complied with this Condition 15.
- 15.3. The Supplier shall indemnify and keep indemnified the Department from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any Default or negligence of the Department or its employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Department. For the purposes of this Condition 15, "**Default**" means any breach of the Supplier's obligations under the Contract or any Default, act, omission or negligence of the Supplier or Staff in connection with or in relation to the subject matter of the Contract.

16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1. The Supplier shall not without the prior written consent of the Department assign, novate, charge, mortgage, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.2. If the use of sub-contractors is approved by the Department the Supplier shall be responsible for the acts and omissions of its sub-contractors as though they were its own.

- 16.3. The Department may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17. TRANSPARENCY

- 17.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Department may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 17.2. Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Department to publish to the general public this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.
- 17.3. The Supplier shall assist and co-operate with the Department to enable the Department to publish this Contract.

18. FREEDOM OF INFORMATION

- 18.1. The Supplier acknowledges that the Department (in whole or in part) is (or may become during the Term) subject to the requirements of the FOIA. The Supplier shall:
- 18.1.1. provide all necessary assistance and cooperation as reasonably requested by the Department to enable the Department to comply with its obligations under the FOIA;
 - 18.1.2. transfer to the Department all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 18.1.3. provide the Department with a copy of all Information belonging to the Department requested in the Request For Information which is in its possession or control in the form that the Department requires within five (5) Working Days (or such other period as the Department may reasonably specify) of the Department's request for such Information; and
 - 18.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the Department.
- 18.2. The Supplier acknowledges that the Department may be required under the FOIA to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Department shall take reasonable steps to notify the Supplier of a Request For Information to the extent

that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Department shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

19. TERMINATION

19.1. The Department shall be entitled to terminate the Contract:

19.1.1. immediately by giving written notice to the Supplier if in the proper opinion of the Department there has been a material or persistent breach of the Contract on the part of the Supplier;

19.1.2. immediately if the Supplier or anyone acting on their behalf either offers, gives or agrees to give to anyone any inducement or reward or confers any other benefit in respect of this or any other Contract (even if the Supplier is unaware of any such action) or otherwise commits an offence under the Bribery Act 2013.

19.1.3. immediately there is any compromise or attempt to compromise the debts owing by the Supplier to creditors generally or an order placing the Supplier under judicial management or for its final or provisional liquidation is granted or the proposing of any resolution for voluntary winding-up, other than for reasons of a bona fide restructuring.

The Supplier shall be liable for all and any losses the Department suffers as a result of the termination of the Contract under this Condition.

19.2. The expiry or termination of the Contract for whatever cause shall not affect any provision of these Conditions capable of surviving and shall be without prejudice to the rights and remedies of one party against the other.

20. CONSEQUENCES OF TERMINATION

20.1. On termination of the Contract for any reason, the Department may require the Supplier to immediately deliver to the Department all Deliverables whether or not then complete, and return all Department Materials. If the Supplier fails to do so, then the Department may 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.

20.2. For the avoidance of doubt, the term of Condition 20.1 is entirely at the discretion of the Department.

21. SERVICE OF NOTICES

21.1. Any demand, notice or other communication required to be given under the Contract shall be sufficiently served if served personally on the addressee, or if sent by pre-

paid first class recorded delivery post to the registered office or last known address of the party to be served.

- 21.2. Any such communication shall be deemed to have been made two (2) Working Days from the date of posting.

22. WAIVER

- 22.1. Failure by the Department at any time to enforce the provisions of the Contract shall not be construed as a waiver of the right of the Department to enforce any provision in accordance with its terms.
- 22.2. The Department may waive any right or remedy arising from a breach of the Contract provided that any such waiver is confirmed in writing and signed on behalf of the Department.

23. DISPUTE RESOLUTION

If the Parties are unable to resolve a dispute concerning the non-performance or inadequacy of performance of any of the Supplier's obligations in the Contract or as to sums due by one party to the other within one (1) month should for any reason the dispute remain unresolved after the period of five (5) days after the said written invitation, the Parties may agree to submit the dispute for determination to the President of the Isle of Man Law Society who shall appoint an arbitrator. The determination shall be held in the Isle of Man and the arbitrator shall act as an expert and not an arbitrator. Where the Parties do not agree to arbitration, the dispute shall be resolved in accordance with Condition 30 below. Each Party shall bear its own costs in respect of dispute resolution and arbitration save that where arbitration takes place, the arbitrator may order otherwise.

24. NO AGENCY/EMPLOYMENT/PARTNERSHIP

Nothing in the Contract shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Department and the Supplier and the Supplier shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Department nor shall the Supplier hold itself out as having authority to bind the Department and shall ensure that its employees and agents do not hold themselves out likewise.

25. FORCE MAJEURE

- 25.1. Neither the Supplier nor the Department shall be liable for breach of its obligations under the Contract to the extent that such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Supplier) lightning or earthquake, war, military operations, act of terrorism or riot but nonetheless each party shall use all reasonable endeavours to perform its obligations under the Contract.
- 25.2. If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than the number of Business Days

referred to in the Purchase Order, the Department may terminate this Contract immediately by giving written notice to the Supplier.

26. SEVERABILITY

If any provision of the Contract shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.

27. THIRD PARTY RIGHTS

Unless otherwise expressly provided, the Contract does not, by virtue of the Contracts (Rights of Third Parties) Act 2001 or otherwise, confer any rights or benefits on any person or class of persons existing now or in the future, who is not a party to the Contract except that a Party's assignee or successor will be deemed to be a Party to the Contract. In any event, the Contract may be varied or rescinded by agreement of the Parties without the consent of any third parties.

28. ENTIRE AGREEMENT

- 28.1. The Contract constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.
- 28.2. Each Party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.
- 28.3. Nothing in this Condition 28 shall limit or exclude any liability for fraud.
- 28.4. In the event of any conflict or inconsistency between these Conditions and any specific terms of the Contract the latter shall prevail.

29. VARIATION

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Department.

30. GOVERNING LAW

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 the laws of the Isle of Man.