

## Contracts and procurement policy

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## **1. Statement**

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- 1.1 These are the Council's rules for contracting for goods, works and services (The Rules). They govern the way in which the GOC spends money on supplies, services and works needed.
- 1.2 The Rules apply to any contract that results in a payment being made by the Council as well as the disposal of surplus goods.
- 1.3 These Rules do not apply to the purchasing of property.
- 1.4 In instances of uncertainty about whether the Rules apply, advice must be sought from the Director of Resources or the Head of Finance.
- 1.5 The GOC must always strive for continuous improvement in any procurement issue and aim to achieve value for money. It must be considered whether this can be best achieved ourselves, with a partner or whether it would be better to rely on an external party in order to get better value.
- 1.6 The Rules need to be flexible for the future. When procuring, all staff should consider the use of collaboration through joint procurements (i.e. purchasing the goods we require with another body). Advice on this should be sought from the Director of Resources.
- 1.7 We must be seen to be permitting freedom of opportunity to trade with us and to be open and transparent about procurement procedures followed.
- 1.8 Our Rules have three main purposes:
  - 1.8.1 to comply with our obligations and with legislation including the EU procurement Directives;
  - 1.8.2 to ensure procurement activities are efficiently measured both by outcomes and value for money, to deliver quality services and supplies; and
  - 1.8.3 to ensure probity.

## **2. Purpose**

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- 2.1 The policy provides a framework for the management and control of the General Optical Council's contracts and other procurement.

## **3. Scope**

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- 3.1 All procurement/commitment is within the framework of the current approved annual budget. Expenditure which falls outside of the approved budget must be sanctioned in advance through SMT/Council as appropriate.
- 3.2 The Rules requiring tenders for the supply of goods and services shall not apply to:
  - 3.2.1 Contracts for the instruction of Counsel or any external legal advice except panel firm appointments;

- 3.2.2 Contracts for expert witnesses and advisers instructed in connection with Hearings: and
- 3.2.3 Recruitment of staff below Director level.

#### **4. Context**

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- 4.1 The European Union sets out obligations when making purchases over a prescribed value. The key principle is to ensure that all person(s) in the marketplace who are in a position to provide the goods, supplies, works or services required over a prescribed value are able to bid to do so if they so wish.
- 4.2 At the highest end of the value scale, the Council must follow EU Public Procurement Directives, requiring the Council to follow certain procedures. In these cases staff must consult with the Director of Resources before they start the procurement process.
- 4.3 All procurement must be undertaken in a professional and ethical manner, ensuring the highest standards of openness, integrity, transparency, probity and accountability.
- 4.4 Full documentation of procurement procedures must be kept at all times.
- 4.5 All contracts must demonstrate compliance with the principles and guidelines as laid down in the Contracts and Procurement policy and EU Procurement Directives:
  - 4.5.1 the principles of procurement best practice and value for money;
  - 4.5.2 appropriate and robust risk management and contract monitoring; and
  - 4.5.3 arrangements for procurement.
- 4.6 All contracts and arrangements with a total value in excess of £25,000 will be recorded by the Head of Finance.
- 4.7 All contracts, tender documents and useful communications relate to the contract must be saved in central procurement folder(s).
- 4.8 All arrangements must follow the GOC's purchase order process and the scheme of financial delegation.

#### **5. Procurement values and thresholds**

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- 5.1 The value of a contract is to be calculated by reference to its total value, whether to be supplied or executed one time or over a specific period. The value of a contract means the estimated total monetary value over its full life, including any extension options not the annual value. Software licenses are exempt from this. The total value should be restricted to the estimated annual value.

##### **A. Value Thresholds**

- 5.2 All tendering and contracting will be subject to the following procedures:

<b>Estimated Total Value</b>	<b>Method</b>	<b>Who may Initiate the Order</b>	<b>Method of acceptance</b>
Up to £5,000	Budget holders discretion	Director/Budget holder	Purchase order (if over £200).
£5,000-25,000	Minimum of 3 suppliers invited to tender	Director/Budget holder	Written acceptance of contract and purchase order
£25,000 - EU minimum threshold	Minimum of 3 suppliers invited to tender	Director and C.E.O.	Written acceptance of contract and purchase order
Above EU Threshold	Tender following full EU guidelines	SMT approval and Council notified at next meeting.	Written acceptance of contract and purchase order

*\*(All figures are inclusive of VAT at the prevailing rate)*

**B. Invitation to tender**

- 5.3 We aim to promote an open and competitive procurement process. Whilst three suppliers is the minimum requirement, invitation to a wider supplier base should be encouraged.
- 5.4 For tenders in excess of £25,000, details should also be posted on the GOC's website. [https://www.optical.org/en/about\\_us/working\\_for\\_us/goc-tenders-.cfm](https://www.optical.org/en/about_us/working_for_us/goc-tenders-.cfm)

**C. Exemptions from the Rules**

- 5.5 Exemptions from these Rules must be obtained in advance:
- a) Up to £25,000 SMT approval
  - b) Over £25,000 SMT and Chair of ARC or Council
- 5.6 The Rules shall not apply in cases of genuine emergency such as unforeseen events likely to cause immediate danger to life, property or breaches in security. In such circumstances SMT are required to take appropriate action and report such action to ARC at the next opportunity.
- 5.7 Tenders and quotations which are provided by suppliers on an existing Government Procurement framework can be accepted, evaluated and awarded in accordance with the Scheme of Delegation for Financial Management.

**D. Single Supplier or Restricted Supplier Tendering**

- 5.8 This Rule shall apply where:
- a) for contracts with an estimated value of less than £25,000 where the Director believes, and SMT agrees, that there is only one possible contractor or supplier suitable for a given contract or where there is a case based on there being a limited number of specialist suppliers capable of delivering a supply or service. This decision will be minuted appropriately in SMT meeting minutes. A Director may then invite and accept tenders from fewer than 3 bodies.
  - b) for contracts over £25,000 but under the EU procurement limit. As above but will then require additional approval, in advance, by the Chair of Council or Chair of ARC.

**E. Who can buy goods, works and services on behalf of the Council?**

- 5.9 Officers (including employees, members or those working on our behalf) authorised to buy goods, works and services in accordance with the above thresholds are stipulated in the Scheme of Delegation.
- 5.10 Before starting any procurement process staff must consider if there is an existing framework arrangement or contract which could be used. This framework or contract could be one already set up by the Council, another Council, a joint purchasing arrangement or organised by Government.

**6. Process to tender**

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- 6.1 Every contract or order over the value specified in the Contract and Procurement policy shall be in writing, be signed by a duly authorised member of staff and specify the goods works or services (including consultancy) to be executed, the price to be paid, the period within which the contract is to be performed and such other terms and conditions agreed by the parties.

**A. Full Tender Procedure**

- 6.2 Where tenders are to be invited for a value over the EU procurement threshold, the procedure to be followed must be determined prior to advertising and must be one of the following:
- i) open tender (all interested contractors submit a tender in response to an advertisement);
  - ii) restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender);
  - iii) negotiated procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to negotiate); or
  - iv) where a Framework arrangement (including approved lists) exists tenders may be invited from capable contractors.

**B. Low and Intermediate-value transactions**

- 6.3 Below EU thresholds at least three written quotations must be invited before a purchase order or contract is issued, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment. Emailed quotations are acceptable in these cases but copies must be retained.
- 6.4 If only one quotation is received, officers must consider seeking additional quotations or obtain an exemption from the Rules under 3.4.
- 6.5 Purchase orders must contain the GOC's standard terms and conditions of contract between the Council and the supplier.

**C. Framework agreements**

- 6.6 Framework agreements are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. They offer benefits of bulk-buying, improved service and

reduced administration costs over the period of the arrangement. EU legislation requires that framework procedures under the scope of the EU Procurement Directives have a maximum term of four years.

- 6.7 Crown Commercial Services (and others) have numerous such Frameworks and should be referred to for all procurement activity above £25,000.

## **7. EU Directives - Additional requirements for transactions valued over EU thresholds**

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- 7.1 All goods and many services with a contract value in excess of £181,302 (plus VAT) (1 January 2018) and all works contracts in excess of 5,000,000 Euros are covered by the EU Consolidated Procurement Directive (2006), which lays down a strict process for advertising, timetabling and contractor selection. All contracts must be advertised in the Office Journal of the European Union (OJEU) and transmitted to their Luxembourg office electronically.
- 7.2 The EU Directives are prescriptive and are regularly updated. For further information and guidance on EU procurement Official Journal of the European Union (OJEU) processes, contact the Legal department for assistance.

## **8. Advertising requirements**

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- 8.1 The Council will strive to ensure fair competition. There will be an equality of opportunity for potential tenderers to compete if they so wish.
- 8.2 Tender notices must describe the nature of the proposed contract, relevant dates, return address, deadline and contact details. The notice or tender documents must state that the Council is not bound to accept the lowest, or any tender.

## **9. Receiving and opening tenders**

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- 9.1 The Council is not obliged to accept the lowest, or any tender, but will generally seek to award on the basis of the best value judged as the most appropriate against a pre-determined evaluation model.
- 9.2 Every response to an invitation to tender should be delivered:  
9.2.1 either electronically; or  
9.2.2 via hard copy, arriving at the premises no later than the time specified for submission of tenders in the invitation to tender.
- 9.3 The opened tenders must be recorded on a list of tenders invited. Late tenders shall not be considered unless, following a request and proof of a legitimate reason, written approval is provided by the Director of Resources.
- 9.4 Persons tendering shall not be allowed to alter their tenders after the date fixed for receipt but arithmetical errors maybe corrected.

## **10. Evaluating tenders**

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- 10.1 Evaluation involves scoring tenders objectively by experienced and appropriate

staff and/or independent experts using criteria which must:

- 10.1.1 be pre-determined and listed in the invitation to tender documentation;
- 10.1.2 be strictly observed at all times throughout the tender process; and
- 10.1.3 include price; consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account;
- 10.1.4 be capable of objective assessment;
- 10.1.5 avoid discrimination or perceived discrimination.

10.2 Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer which submits the tender that achieves the highest score in the objective assessment.

## **11. Awarding contracts**

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11.1 A contract must only be awarded and signed by an officer authorised to do so. (Please refer to the scheme of financial delegation).

11.2 Full records of all procurement activity must be retained in accordance with the Council's Document Retention Schedule in either electronic or hard-copy format as appropriate. This includes, but is not limited to, initial proposals, specifications successful and unsuccessful tenders and other contract documentation.

11.3 A signed electronic copy of the final contract should be filed on the central register of contracts and the central contract and supplier list updated accordingly. H:\01 Shared Resources\01.03 Documents

## **12. Execution of contract**

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12.1 Every contract is to be in writing specifying the nature of the goods, works or services, the price and the time in which it is to be performed.

12.2 Every contract with a value **in excess of £25,000** but less than specified in accordance with EU limits will be in writing and signed by a Director and the Chief Executive and Registrar.

12.3 Contracts with a value **in excess of EU tender limits** will be in writing and signed by the Council Chair or any Council member and Chief Executive and Registrar once approved by Council.

### **A. Prohibition**

12.4 Every written contract for the supply of goods or materials, or for the execution of work or the provision of services, whether to be supplied or executed at any one time during a specified period, shall contain a clause prohibiting the contractor from transferring or assigning, directly or indirectly, to any person or persons whatsoever, any portion of his/her contract without the permission of the Council, or from sub-letting any portion of his/her contract other than which may be customary in the trade or profession concerned.



**B. Failure to Execute Contract**

- 12.5 In every written contract that exceeds the value of £25,000, we must insert a clause that ensures that if the other party fails to comply with the specific terms of a contract, the contractor will arrange to provide the service or goods by another means.

**13. Conditions of contract**

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**A. Financial Appraisal**

- 13.1 Suppliers bidding for any contract where the value exceeds £25,000 described in the Contracts and Procurement Policy, may be subject to a financial appraisal, including appropriate financial checks and reports and a risk analysis to be carried out and evidenced by the Director of Resources.

**B. Adherence to GOC's policies**

- 13.2 Where practical suppliers should comply with the GOC's policies around sustainability, environmental legislation ethical issues, living wage, reference to codes of conduct, bribery policy together with performance monitoring and reporting mechanisms. These are stated in the GOC's standard Terms & Conditions.

**C. Disposing of Surplus Goods**

- 13.3 Budget Holders are responsible for the disposal of their own surplus goods.
- 13.4 The same competitive process for buying supplies, services and works must also be applied to the disposal of surplus goods. In principle:
- 13.4.1 competitive bids need not be invited if the goods are valued at or below £10,000;
- 13.4.2 if the estimated value of the goods is **greater than £10,000** and then a minimum of **three bids** must be invited;

**14. Prevention of corruption and conflicts of interest**

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- 14.1 All officers involved in procurement must behave in a professional manner with due regard to matters of probity. Any pecuniary interests must be declared and the relevant codes of conduct be complied with at these times.
- 14.2 No gifts or hospitality as outlined in the GOC's policy should be accepted from any tenderers to any contract being let by the Council and to do so is a disciplinary offence.

**15. Contract extension and variations**

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- 15.1 Contracts must adhere to the original terms and conditions, financial value, nature of goods or services being provided and timescale.
- 15.2 However, in exceptional circumstances Directors may seek to lengthen or vary contracts. However the overall contract value, including the extension, must not take it into a higher threshold. Such decisions must be recorded. It should be noted however that procurement under EU Directives include timescales which cannot be extended outside the original terms of EU notices.

## **16. TUPE**

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16.1 Advice must be sought from relevant parties where a contract is likely to involve changes to staffing or work conditions, redundancy, relocation or transfer of employment or any other aspects relating to the Transfer of Undertaking of Protected Employment Regulations. TUPE issues should be included in evaluation and tender reports. Due regard must be taken of all regulations concerning TUPE and workforce matters including appropriate consultation with staff.

## **17. Appointment of Consultants**

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17.1 The Rules set out for tendering and contracts apply to the appointment of consultants and consultancy organisations.

17.2 A consultant appointed to advise on a project, to design work or to advise an evaluation or similar exercise must not be permitted to bid for any subsequent stage of the work or project.

17.3 In some cases consultants may be defined as employees where they are working in a general capacity rather than on a project. The Head of HR should be consulted to confirm the status of such an employee.

17.4 Consultants working as employees should be subject to the same DBS checks as normal employees.

17.5 Consultants are required to sign a non-disclosure agreement before they commence work.

## **18. Risk analysis**

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18.1 All contracts with a value above £25,000 must include a robust Risk Analysis with appropriate arrangements for on-going risk management throughout the lifetime of the contract.

18.2 Risks must be proactively monitored throughout the lifetime of the contract and any areas of concern reported to the Director of Resources.

## **19. Information Governance**

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19.1 Information security and data sharing must be considered throughout the procurement process.

19.2 A privacy impact assessment must be conducted when the processing is likely to result in a high risk to the rights and freedoms of individuals; and is particularly relevant when new data processing technologies are being introduced.<sup>1</sup>

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<sup>1</sup> General Data Protection Regulations 2016/679 (Article 29 - [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=47711](http://ec.europa.eu/newsroom/document.cfm?doc_id=47711))

- 19.3 Processing that is likely to result in a high risk includes (but is not limited to):
- 19.3.1 large scale, systematic monitoring of public areas (CCTV);
  - 19.3.2 systematic and extensive processing activities; or
  - 19.3.3 large scale processing of special categories of data or personal data relation to criminal convictions or offences.
  - 19.3.4 This includes processing a considerable amount of personal data at regional, national or supranational level; that affects a large number of individuals; and involves a high risk to rights and freedoms, for example, based on the sensitivity of the processing activity.
- 19.4 Any contract and/or terms and conditions with a third party must contain a clause on information sharing and security and it must stipulate the end of contract requirements. This wording must be approved by Legal and Compliance. This should include a non-disclosure agreement where applicable.

## **20. Compliance**

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- 20.1 The Head of Finance shall keep a record of all departures from Rules which exceptions over £25,000 will be included in the regular exceptions report to ARC. The log of all departures will be available for inspection by ARC upon request.
- 20.2 The Director of Resources is responsible for agreeing variations to these procedures subject to any necessary agreement with the Chief Executive and the Council.

## **21. Annexes**

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- 21.1 Annex 1 – Standard GOC Terms and Conditions

## Annex 1: Standard GOC Terms and Conditions

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### TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES (PURCHASE ORDERS ONLY) FOR THE GENERAL OPTICAL COUNCIL

#### 1. Definitions

In this document the following words shall have the following meanings:

1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Purchase Order;

1.2 "GOC" means The General Optical Council, 10 Old Bailey, London EC4M 7NG

1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

1.4 "Purchase Order" means the standard Customer document which includes or is attached to a statement of work describing the goods and/or services to be provided by the Supplier and which provides a maximum value payable by the GOC to the Supplier;

1.5 "Supplier" means the organisation or person who supplies goods and/or services to the GOC;

#### 2. General

2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and/or services by the Supplier pursuant to one or more Purchase Order.

2.2 Where it is agreed that the Supplier shall supply goods and/or services, the goods and/or services to be supplied, the price payable and any other special terms agreed between the parties shall be set out in the Purchase Order. All Purchase Orders shall be subject to these Terms and Conditions.

2.3 No changes or variations to these Terms and Conditions or any Purchase Order shall be effective unless agreed in writing between the parties.

#### 3. Price

3.1 The price and any related expenses for the goods and/or services shall be as specified in the Purchase Order.

3.2 An invoice shall be produced by the Supplier to the GOC in accordance with the terms set out in the Purchase Order.

3.3 The GOC shall not be responsible for any expenses, charges or price other than those set out in the Purchase Order.

3.4 Invoiced amounts shall be due and payable once the goods have been delivered.

3.5 If the parties agree that the Supplier is to provide goods and/or services or resources in addition to those specified in a Purchase Order, then such agreement will be reflected in a further Purchase Order, which will be deemed incorporated into this Agreement.

3.6 Once a Purchase Order has been agreed by the GOC the price for the goods and/or services shall be fixed.

#### 4. Quality of the Goods and Services

4.1 The goods and / or services provided under the contract shall:

4.1.1 confirm to the quantity, quality and description detailed in the Purchase Order;

4.1.2 be fit for the purpose made known to the Supplier expressly or by implication;

4.1.3 be free from any defects, patent or latent, in material and workmanship;

4.1.4 comply with current legislation and specified and / or relevant quality standards;

4.1.5 be provided by suitably experienced and qualified staff;

4.1.6 be delivered on the date and to the address specified in the Purchase Order.

4.2 If the goods and / or services do not comply with the clause 4.1 the GOC is entitled as its option to;

4.2.1 reject the goods / services, in whole or part and return the goods to the Supplier at the Supplier's risk and cost;

4.2.2 require the Supplier to re-perform the service or redeliver the goods, in whole or in part, at the expense of the Supplier.

4.3 Risk and title in the goods and / or services shall only pass to the GOC on acceptance of the goods and / or services when delivered to the address in the Purchase Order. The GOC also reserves the right to take possession of all goods to which it has title.

4.4 Any goods lost or damaged in transit shall be restored or replaced by the Supplier at the Supplier's expense to the GOC's satisfaction.

4.5 If, at any time within 3 months from the date of delivery, the goods and / or services fail to comply with the Purchase Order, the GOC may reject the whole of any part of the goods and / or services. The GOC may accept replacement goods and / or services from the Supplier, at the Supplier's expense.

4.6 The Supplier agrees to provide a 12 month warranty in respect of all goods supplied to the GOC.

**5. Intellectual Property**

5.1 The Supplier will not infringe any patent, trademark, trade name, service mark, design right (whether registered or not), copyright, database right or other right in the nature of industrial and / or intellectual property of any third party in any country including but not limited to the UK.

5.2 The Supplier shall indemnify the GOC against all actions, suits, claims, demands, losses, charges, costs and expenses which the GOC may suffer or incur as a result of, or in connection with, any breach or alleged breach of Clause 5.1.

5.3 The Supplier agrees to assign to the GOC the copyright, intellectual property rights and any related rights for any products, deliverables and outputs originated or developed during the performance of the Services, for the full term of such copyright or other intellectual property rights (including any extensions, revivals or renewals) throughout the world, together with any accrued rights or causes of action. The Supplier shall do all such things necessary to effect such an assignment.

5.4 The Supplier agrees to grant to the GOC a free of charge, irrevocable licence for use of any proprietary confidential information that they had produced prior to the start of this Contract, which supports the Services of this Contract.

5.5 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs, photographs, images or other material provided to or made available to the Supplier by the GOC pursuant to the Contract shall remain vested solely in the GOC.

5.6 All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan, or information in connection with the Contract shall deemed to have been included in the Purchase Order price. The Supplier shall indemnify the GOC from and against all demands, actions, claims and proceedings, which may be made or brought against the GOC, and any damages, cost and expenses incurred by the GOC in respect of such supply or use.

**6. Invoices, Payment and Set off**

6.1 A detailed priced invoice, shall be emailed to the GOC at the address detailed in the purchase order. Invoices shall be emailed after delivery of the supplies and / or services is complete and shall bear the GOC's purchase order number.

6.2 The GOC shall make payment within 30 days of receipt of a valid invoice from the Supplier.

6.3 The GOC may set off against any sums due to the Supplier whether under this contract or otherwise any lawful set off or counterclaim to which the GOC may at any time be entitled.

**7. Liability, Indemnity and Insurance**

7.1 The Supplier agrees to indemnify and keep indemnified the GOC from and against any loss, damage, damages, actions, claims, demands, proceedings, costs, charges, expenses or any other liability (whether criminal or civil) suffered or incurred by the GOC resulting from its obligations under the contract.

7.2 During the term of the contract, the Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the contract and in respect of the liability outlined in 7.1. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

7.3 Neither party shall exclude liability for death, personal injury or fraud.

**8. Force Majeure**

Notwithstanding anything contained in these terms and conditions neither party shall be liable for any loss damage or expense suffered or incurred by the other party if by reason of fire, war, strike, lockout or any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by the party.

**9. Confidentiality**

The Supplier shall treat all information belonging to the GOC as confidential and safeguard it accordingly. Except with the prior consent in writing of the GOC, the Supplier shall not disclose the contract or any provision thereof to any person other than a member of the Supplier's staff or any other person concerned with the provision of services, who must also maintain the confidentiality and safeguards of the information.

**10. Freedom of Information**

The Supplier acknowledges that the GOC is subject to the Freedom of Information Act 2000 and may disclose information under that legislation. Where applicable, the Supplier shall provide all necessary assistance to enable the GOC to comply with its obligations.

**11. Protection and Security of Personal Data**

11.1 The supplier shall comply with its obligations under the provisions of the Data Protection Act 1988 ("the Act") and relevant data legislation, including superseding legislation such as the Data Protection Bill and the EU General Data Protection Regulations.

11.2. The Supplier undertakes to keep the information secure and to only process personal data (including personal sensitive data) on behalf of the GOC and in accordance with GOC's instructions and

purposes, and shall treat personal data as confidential information.

11.3 The Supplier shall meet any specific information security requirements of the GOC as specified for this purchase order, and is responsible for implementing their own appropriate technical and organisational measures to keep the information secure.

11.4 The Supplier undertakes to report any actual or potential breach of Information Security (including unauthorised access, unintentional loss or other breach of information rights) immediately to the GOC and certainly within 24 hours of being aware of an actual or potential breach, and to provide further details regarding any incident and to take appropriate action as directed by the GOC.

11.5 The Supplier will, on request from the GOC, return all records of personal data to the customer within one calendar month of the request and undertake not to retain any copies or records of personal data without the explicit permission of the GOC.

## **12. Ethics and Equality**

The Supplier acknowledges that the GOC is subject to the Public Sector Equality Duty under the Equality Act 2010 and, where applicable, the Supplier shall provide all necessary assistance to enable the GOC to comply with its obligations.

## **13. Waiver**

The failure or delay of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy. Nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **14. Contracts (Rights of the Third Parties) Act 1999**

A person who is not a party to the contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties. The parties may rescind or vary this contract without the consent of a third party to whom an express right to enforce any of its terms has been provided.

## **15. Supplier's Status**

Nothing in the contract shall be construed as creating partnership, a contract of employment or a relationship of principal and agent between the GOC and the Supplier. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

## **16. Dispute Resolution**

The parties shall attempt in good faith to negotiate a settlement to any dispute arising out of or in connection with this contract. In the event a settlement cannot be reached within one month the dispute may be referred by agreement between the parties to a mediator chosen by the parties. If the parties fail to enter into a written agreement resolving

the dispute within one month of the mediator being appointed, either party may exercise any remedy it has under applicable law.

## **17. Termination**

17.1 The GOC may terminate the contract with immediate effect if:

17.1.1 a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier or any partner in the firm, or the Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Supplier's or firm's affairs or

17.1.2 where the Supplier passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

17.1.3 where the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

17.2 If the Supplier breaches any terms of this contract the GOC may (if the breach is capable of remedy) give the Supplier notice of the breach and the Supplier shall remedy the breach within 7 days from receipt of the notice of the breach. If the Supplier fails to remedy the breach or if the breach is not capable of remedy the GOC may terminate the contract with immediate effect.

## **18. Sub-contracting and Assignment**

The Supplier shall not assign or sub-contract the contract or any portion of the contract without the prior written consent of the GOC. Sub-contracting any part of the contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the contract or these conditions.

## **19. Observance of Statutory Requirements**

The Supplier shall comply with all the statutes, orders, regulations or bye laws applicable to the performance of this contract, and shall indemnify the GOC against any losses, claims or liabilities, expenses, proceedings or otherwise as a result of the Supplier's non-compliance with the same.

## **20. Notices**

Any notification given under or pursuant to this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by

delivering it personally or sending it by pre-paid first class or recorded delivery or registered post to the address set out at 1.2 and for the attention of the Director of Resources or delivered by email to [address]. Any such notice or communication shall be deemed to have been received.

**21. Governing Law and Jurisdiction**

This contract shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.