

[Insert Supplier name]

[Insert Supplier address]

Attn: [Insert Supplier contact name]

By email to: [Insert Supplier contact email address]

Date: [Insert date]

Your ref: [Insert Supplier's reference, if any]

Our ref: [Insert ACE's reference]

Dear Sirs,

Award of contract for the supply of [insert description of Goods and/or Services]

Following your tender / proposal for the supply of [insert short description of goods and/or services] to Arts Council England, we are pleased to award this contract to you.

This letter (referred to as the "Award Letter") and its Annexes set out the terms of the contract between The Arts Council of England trading as Arts Council England (a registered charity with charity number 1036733) ("ACE") and [Insert Supplier's full name] as the Supplier for the provision of the Goods and/or Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the "Conditions"). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by ACE and may delay the conclusion of the Agreement.

For the purposes of the Agreement, ACE and the Supplier agree as follows:

1 The Services shall be performed at [insert description of premises (including whether they are ACE's premises, the Supplier's premises and/or a third party's premises and in each case the address)].

2 The Goods shall be Delivered in accordance with the following instructions:

Delivery Address

[Insert delivery address, including telephone number of receiving individual]

Date of Delivery

[Insert date of delivery]

Packaging Instructions:

[Insert packaging instructions and/ or details of the Customer's environmental policy, see clause 21.4]

Additional Delivery Instructions: [Including time of Delivery if to be made outside of normal business hours]

3 The charges for the Services shall be as set out in [Annex 2 / the Supplier's quotation dated **[insert date]** enclosed at Annex 2].

4 The specification of the Goods and/or Services to be supplied is as set out in [Annex 3 / the Supplier's quotation dated **[insert date]** enclosed at Annex 2].

5 The Term shall commence on **[insert the start date of the contract]** and the Expiry Date shall be **[insert the date on which the contract will end unless extended or subject to early termination]**.

6 The Limit of Liability of the Supplier under this Agreement shall be: **[insert limit of liability, note that this could be phrased as a single amount, a proportion of the Charges (e.g. 150%) and/or separated out into different limits for different types of liability.]**

7 The Supplier shall maintain the following insurances throughout the Term of this Agreement:

- (a) employer's liability and any other insurances required by Law with a minimum sum insured of £**[insert amount]** (**[insert amount]** pounds sterling) in respect of any one occurrence;
- (b) professional indemnity insurance with a minimum sum insured of £**[insert amount]** (**[insert amount]** pounds sterling) in respect of any one occurrence;
- (c) product liability cover with a minimum sum insured of £**[insert amount]** (**[insert amount]** pounds sterling) in respect of any one occurrence;
- (d) loss, damage or destruction of any of ACE's or any member of its Group's property under the custody and control of the Supplier, with a minimum sum insured of £**[insert amount]** (**[insert amount]** pounds sterling) in respect of any one occurrence; and
- (e) public liability insurance for a minimum sum insured of £**[insert amount]** (**[insert amount]** pounds sterling) in respect of any one occurrence.

8 The address for notices of the Parties are:

ACE

Supplier

Arts Council England

[Insert full name and address of Supplier]

21 Bloomsbury Street

Attention: [Insert title]

London

Email: [Insert email address]

WC1B 3HF

Attention: [Insert title]

Email: [Insert email address]

- 9 [The following persons are Key Personnel for the purposes of the Agreement:] [Drafting Note: Delete if not required for this Agreement.]

Name

Title

- 10 For the purposes of the Agreement the [Staff Vetting Procedures/data security requirements/equality and diversity policy/ [and] environmental policy [is/are]: [Insert as appropriate]

- 11 ACE may require the Supplier to ensure that any person employed in the provision of the Goods and/or Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Goods and/or Services, relevant to the work of ACE, or is of a type otherwise advised by ACE (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Goods and/or Services.

- 12 [For the purposes of the Agreement, the following additional conditions shall apply:] [Drafting Note: Delete if not required for this Agreement.]

Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to:

[Arts Council England

21 Bloomsbury Street

London

WC1B 3HF]

Within [10] working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to **[Insert email address]** or by telephone **[Insert telephone number]** between 09:00-17:00 Monday to Friday.

Liaison

For general liaison your contact will continue to be **[Insert Contract Manager name and contact details]** or, in their absence, **[Insert secondary name and contact details]**.

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Goods and/or Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to **[Insert name]** at the above address within 14 days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

Signed for and on behalf of The Arts Council of England trading as Arts Council England

Name: **[Insert name]**
[Insert job title]

Signature:

Date:

We accept the terms set out in this letter and its Annexes, including the Conditions.

Signed for and on behalf of **[Insert full name of Supplier]**

Name: **[Insert name]**
[Insert job title]

Signature:

Date:

Annex 1

Terms and Conditions of Contract for Services

1 INTERPRETATION

1.1 In these terms and conditions:

“ACE” means The Arts Council of England trading as Arts Council England (registered charity number 1036733);

“Agreement” means the contract between (i) ACE and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;

“Award Letter” means the letter from ACE to the Supplier printed above these terms and conditions;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Charges” means the charges for the Goods and/or Services as specified in the Award Letter;

“Confidential Information” means:

- (a) all confidential information and data which is acquired from or made available (directly or indirectly) by the Disclosing Party or the Disclosing Party’s representatives however conveyed or presented, including but not limited to any information or document relating to the Disclosing Party’s business, affairs, operations, budgets, policies, processes, initiatives, plans, product information, pricing information, technical or commercial know-how, trade secrets, specifications, strategies, inventions, designs, software, market opportunities, personnel, customers or

suppliers (whether relating to this Agreement or otherwise) either orally, in writing, or in whatever form obtained or maintained;

- (b) any information or analysis derived from the Confidential Information;
- (c) anything marked as confidential and any other information notified by or on behalf of the Disclosing Party to the Receiving Party as being confidential;
- (d) the existence and terms of this Agreement and of any subsequent agreement entered into in relation to this Agreement;
- (e) the fact that discussions and negotiations are taking place concerning this Agreement and the status of those discussions and negotiations; and
- (f) any copy of any of the information described in (a), (b), (c), (d) or (e) above, which shall be deemed to become Confidential Information when it is made. For the purposes of this definition, a copy shall include, without limitation, any notes or recordings of the information described in (a), (b), (c), (d) or (e) above (howsoever made);

“Data Protection Legislation” means, for the periods in which they are in force, the European Union Data Protection Directive (95/46/EC), all laws giving effect or purporting to give effect to the European Data Protection Directive (94/46/EC), the GDPR or otherwise relating to Data Protection, including the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the GDPR and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

“Data Subject” shall have the same meaning as in the Data Protection Legislation;

“Date of Delivery” means that date by which the Goods must be Delivered to ACE, as specified in the Award Letter;

“Declaration of a declaration made by a Court under regulation 98 which has any of the

“Ineffectiveness”	consequences described in regulation 101 of the Public Contracts Regulations 2015 or which is made under an equivalent provision implementing Directive 2014/23/EU in England, Wales & Northern Ireland and which has consequences which are similar to any of the consequences described in regulation 101 of the Public Contracts Regulations 2015;
“Deliver”	means hand over the Goods to ACE at the address and on the date specified in the Award Letter, which shall include unloading and any other specific arrangement agreed in accordance with clause 7. “Delivered” and “Delivery” shall be construed accordingly;
“Disclosing Party”	means a Party that makes a disclosure of Confidential Information to another Party;
“Dispute”	means any dispute, conflict or disagreement arising out of or in connection with this Agreement;
“EIRs”	means the Environmental Information Regulations 2004;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Force Majeure Event”	shall be limited to one or more of the following events: hurricanes, tempest, acts of state or public enemy, wars, revolutions, uprisings, hostilities, civil disturbances, riots, civil war, insurrection and invasion. For the avoidance of doubt, strikes, lockouts and shutdowns of a Party (or of any person engaged by any of them) shall not be a force majeure event for that Party;
“GDPR”	means: <ul style="list-style-type: none"> (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 25 May 2018; or (g) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679);
“Good Industry Practice”	means all relevant practices and professional standards that would be expected of a well-managed, expert service provider performing services substantially similar to the Services or goods substantially similar to the Goods to customers of a substantially similar size and nature as ACE;
“Goods”	means the goods to be supplied by the Supplier to ACE, under the Agreement;
“Information”	has the meaning given under section 84 of the FOIA;

“Intellectual Property Rights”	means any right, title or interest in patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, trade names and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, semiconductor topography rights, 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;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by ACE to the Supplier in writing;
“Limit of Liability”	means the Supplier’s limit of liability as specified in the Award Letter;
“Model Clauses”	means the standard clauses for the transfer of personal data to a processor outside of the European Economic Area in the form as adopted by the European Commission from time to time;
“Party”	means the Supplier or ACE (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	has the meaning given to this term by the Data Protection Legislation;
“Personal Data Breach”	shall have the same meaning as in the Data Protection Legislation;
“Public Procurement Termination Event”	ACE exercises its right to terminate the Agreement in one or more of the circumstances described in either regulation 73(1) of the Public Contracts Regulations 2015) (as amended from time to time), or equivalent provisions implementing Directive 2014/23/EU in England, Wales & Northern Ireland (as amended from time to time);
“Purchase Order Number”	means ACE’s unique number relating to the supply of the Goods and/or Services;
“Receiving Party”	means a Party to which a disclosure of Confidential Information is made by another Party;
“Request for Information”	has the meaning set out in the FOIA or the EIRs as relevant (where the meaning set out for the term “request” shall apply);

“Services”	means the services to be supplied by the Supplier to ACE under the Agreement;
“Specification”	means the specification for the Goods and/or Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by ACE, ACE’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Supplier Dispute”	means any disputes, claims, litigation, mediation or arbitration whether threatened or pending in relation to any incident involving the Supplier’s, or another party’s, provision of the Goods and/or Services;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 5.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- (a) references to numbered clauses are references to the relevant clause in these terms and conditions;
- (b) any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- (c) the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- (d) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

- (e) the word 'including' shall be understood as meaning 'including without limitation'.

2 BASIS OF AGREEMENT

- 2.1 The Award Letter constitutes an offer by ACE to purchase the Goods and/or Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by ACE of a copy of the Award Letter countersigned by the Supplier within 14 days of the date of the Award Letter.

3 SUPPLY OF SERVICES

- 3.1 In consideration of ACE's agreement to pay the Charges, the Supplier shall supply the Services to ACE for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
 - (a) co-operate with ACE in all matters relating to the Services and comply with all ACE's instructions using reasonable endeavours to promote ACE's interests;
 - (b) perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - (c) use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - (d) ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - (e) not do or allow anything to be done that would, or would be likely to, bring ACE into disrepute or adversely affect its reputation in any way;
 - (f) comply with all applicable laws; and
 - (g) provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 ACE may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between ACE and the Supplier.

4 SUPPLY OF GOODS

4.1 In consideration of ACE's agreement to pay the Charges, the Supplier shall supply the Goods to ACE subject to and in accordance with the terms and conditions of the Agreement.

4.2 In supplying the Goods, the Supplier shall co-operate with ACE in all matters relating to the supply of Goods and comply with all ACE's instructions.

4.3 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:

- (a) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (c) conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
- (d) be free from design defects;
- (e) be fit for any purpose held out by the Supplier or made known to the Supplier by ACE expressly or by implication, and in this respect ACE relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by ACE of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
- (f) and the Supplier itself shall, comply with all applicable laws.

5 TERM

5.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 5.2 or terminated in accordance with the terms and conditions of the Agreement.

5.2 ACE may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

6 CANCELLATION

- 6.1 ACE shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to ACE. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, ACE shall pay such Charges or that part of the Charges for Goods which have been Delivered to ACE or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt ACE shall not be liable for any loss of anticipated profits or any consequential loss.

7 DELIVERY

- 7.1 The Supplier shall Deliver the Goods to ACE on or by the Date of Delivery. Unless otherwise agreed in writing by ACE, Delivery shall be on the date and to the address specified in the Award Letter. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and ACE has signed for the Delivery.
- 7.2 Any access to ACE's premises and any labour and equipment that may be provided by ACE in connection with Delivery of the Goods shall be provided without acceptance by ACE of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of ACE or its servant or agent. The Supplier shall indemnify ACE in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which ACE may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
- 7.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 7.4 Unless otherwise stipulated by ACE in the Award Letter, Deliveries shall only be accepted by ACE on Working Days and during normal business hours.
- 7.5 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 4, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:

- (a) to terminate the Agreement;
- (b) request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by ACE;
- (c) to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and ACE shall be entitled to a full refund on those Goods or part of Goods duly returned;
- (e) to buy the same or similar Goods from another supplier; and
- (f) to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

8 PROPERTY AND GUARANTEE OF TITLE

8.1 Without prejudice to any other rights or remedies of ACE, title and risk in the Goods shall pass to ACE when Delivery of the Goods is complete (including off-loading and stacking).

8.2 The Supplier warrants that:

- (a) it has full clear and unencumbered title to all the Goods;
- (b) at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to ACE; and
- (c) on Delivery, ACE shall acquire a valid and unencumbered title to the Goods.

9 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE

9.1 The Charges for the Goods and/or Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services. Unless otherwise agreed in writing by ACE, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the provision of the Goods and/or performance of the Services.

9.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate where applicable. ACE shall, where applicable and following the receipt of a valid VAT

invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and/or Services.

- 9.3 The Supplier shall invoice ACE as specified in the Agreement. Each invoice shall include such supporting information required by ACE to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods and/or Services supplied in the invoice period as well as appropriate details in order to allow for payment via BACS transfer (sort code and bank account details). Please contact the ACE finance department should you require further details.
- 9.4 In consideration of the supply of the Goods and/or Services by the Supplier, ACE shall pay the Supplier the invoiced amounts via BACS no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number and appropriate BACS details. ACE may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 9.5 If ACE fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed (which shall be no less than 14 calendar days).
- 9.6 If there is a dispute between the Parties as to the amount invoiced, ACE shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 21.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 27.
- 9.7 If a payment of an undisputed amount is not made by ACE by the due date, then ACE shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- (a) provisions having the same effects as clauses 9.3 to 9.7 of this Agreement; and
 - (b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 9.3 to 9.8 of this Agreement.
 - (c) In this clause 9.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from ACE in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

9.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to ACE in respect of any breach of the Agreement), that sum may be deducted unilaterally by ACE from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with ACE. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against ACE in order to justify withholding payment of any such amount in whole or in part.

10 PREMISES AND EQUIPMENT

10.1 If necessary, ACE shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Goods and/or Services. All equipment, tools and vehicles brought onto ACE's premises by the Supplier or the Staff shall be at the Supplier's risk.

10.2 If the Supplier supplies all or any of the Goods and/or Services at or from ACE's premises, on completion of the Goods and/or Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate ACE's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Goods and/or Services and leave ACE's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to ACE's premises or any objects contained on ACE's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

10.3 If the Supplier supplies all or any of the Goods and/or Services at or from its premises or the premises of a third party, ACE may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Goods and/or Services are supplied at or from the relevant premises.

10.4 ACE shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on ACE's premises the Supplier shall, and shall procure that all Staff shall, comply with all ACE's security requirements.

10.5 Where all or any of the Goods and/or Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by ACE in writing.

10.6 Without prejudice to clause 3.2(g), any equipment provided by ACE for the purposes of the Agreement shall remain the property of ACE and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to ACE on expiry or termination of the Agreement.

10.7 The Supplier shall reimburse ACE for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by ACE shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless ACE is notified otherwise in writing within 5 Working Days.

11 STAFF AND KEY PERSONNEL

11.1 If ACE reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- (a) refuse admission to the relevant person(s) to ACE's premises;
- (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s); and/or
- (c) require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by ACE to the person removed is surrendered,

and the Supplier shall comply with any such notice.

11.2 The Supplier shall:

- (a) ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- (b) if requested, provide ACE with a list of the names and addresses (and any other relevant information) of all persons who may require admission to ACE's premises in connection with the Agreement; and
- (c) procure that all Staff comply with any rules, regulations and requirements reasonably specified by ACE.

11.3 Any Key Personnel shall not be released from supplying the Goods and/or Services without the agreement of ACE, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

11.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of ACE (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Goods and/or Services.

11.5 For the purposes of this Agreement, the Supplier shall be considered an independent contractor of ACE and the Supplier and (if applicable) its Staff shall not be considered employees. Accordingly ACE is not obliged to pay any wages, salary, sickness or

holiday pay. The Supplier shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of its Staff. The Supplier shall ensure that equivalent provisions to this clause are contained in its terms with its Staff.

- 11.6 ACE may, at any time during the Term, request that the Supplier provide the information which demonstrates how the Supplier or its Staff comply with clause 11.5 or why clause 11.5 does not apply to the Supplier or its Staff. ACE has a right to terminate this Agreement if:
- (a) the Supplier fails to provide the information in response to the request within a reasonable time or the information provided is inadequate to demonstrate compliance with clause 11.5;
 - (b) the specified information requested was not provided within the specified period;
or
 - (c) the information provided demonstrates that the Supplier or its Staff are not complying with terms of this clause 11.5.

Clauses 11.5 and 11.6 are required to enable ACE to comply with the requirements of Procurement Policy Note 07/12 (issued by the Cabinet Office).

12 ASSIGNMENT AND SUB-CONTRACTING

- 12.1 The Supplier shall not without the written consent of ACE assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. ACE may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 12.2 Where ACE has consented to the placing of sub-contracts, the Supplier shall, at the request of ACE, send copies of each sub-contract, to ACE as soon as is reasonably practicable.
- 12.3 ACE may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights in any materials provided by ACE to the Supplier for the purposes of this Agreement shall remain the property of ACE but ACE hereby grants the

Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under this Agreement.

13.2 The ownership of all Intellectual Property Rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Goods and/or Services shall vest in ACE. If, and to the extent, that the ownership of any Intellectual Property Rights in such materials vest in the Supplier by operation of law, the Supplier hereby assigns ownership of such Intellectual Property Rights to ACE by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

13.3 ACE hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use any Intellectual Property Rights in the materials created or developed by the Supplier pursuant to the Agreement and any Intellectual Property Rights arising as a result of the provision of the Goods and/or Services as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement

13.4 Without prejudice to clause 13.2, the Supplier hereby grants ACE a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

- (i) any Intellectual Property Rights vested in or licensed to the Supplier on the date of the Agreement to the extent not falling within clause 13.2; and
- (ii) any Intellectual Property Rights created during the Term to the extent not falling within clause 13.2, i.e. which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Goods and/or Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which ACE reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Goods and/or Services provided.

13.5 If the Supplier is carrying out research on ACE's behalf, ACE will consider requests to use the research data in the Supplier's (or its Staff's) own academic work provided that the Supplier:

- (a) inform ACE of the overall objective of the academic work, the timetable and proposed date and place of publication;

- (b) acknowledge that the Supplier conducted the research on ACE's behalf and that it was funded by ACE in any publications or accompanying publicity;
- (c) anonymise all data to protect the identity of any individual or organisation;
- (d) provide a copy of the work to ACE before publication and make any reasonable amendments we may request to ensure accuracy; and
- (e) state that any views expressed are those of the Supplier and not necessarily those of ACE,

provided that, at all times ACE retains absolute discretion to refuse any request under this clause to use ACE's research data.

- 13.6 The Supplier shall indemnify, and keep indemnified, ACE in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by ACE as a result of or in connection with any claim made against ACE for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods and/or Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

14 GOVERNANCE AND RECORDS

14.1 The Supplier shall:

- (a) attend progress meetings with ACE at the frequency and times specified by ACE and shall ensure that its representatives are suitably qualified to attend such meetings; and
- (b) submit progress reports to ACE at the times and in the format specified by ACE.

14.2 The Supplier shall keep and maintain until 6 years after the expiry or termination of the Agreement, or as long a period as may be agreed between the Parties in the Award Letter or otherwise, full and accurate records of the Agreement including the Goods and/or Services supplied under it and all payments made by ACE. The Supplier shall on request afford ACE or ACE's representatives such access to those records as may be reasonably requested by ACE in connection with the Agreement.

15 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

15.1 Subject to clause 15.2, each Party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the Disclosing Party; and
- (b) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

15.2 Notwithstanding clause 15.1, a Receiving Party may disclose Confidential Information:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) to the Serious Fraud Office where the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the Receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause (e) shall observe the Supplier's confidentiality obligations under the Agreement; and
- (f) where the Receiving Party is ACE:
 - (i) on a confidential basis to the employees, agents, consultants and contractors of ACE;
 - (ii) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which ACE transfers or proposes to transfer all or any part of its business;
 - (iii) to the extent that ACE (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - (iv) in accordance with clause 16.
 - (v) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on ACE under this clause 15.

15.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for ACE to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA or EIRs (as applicable) redacted) including any changes to the Agreement agreed from time to time. ACE may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA or EIRs.

15.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of ACE.

16 FREEDOM OF INFORMATION

16.1 The Supplier acknowledges that ACE is subject to the requirements of the FOIA and the EIRs and shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by ACE to enable ACE to comply with its obligations under the FOIA and the EIRs;
- (b) transfer to ACE all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide ACE with a copy of all Information belonging to ACE requested in the Request for Information which is in its possession or control in the form that ACE requires within 5 Working Days (or such other period as ACE may reasonably specify) of ACE's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by ACE.

16.2 The Supplier acknowledges that ACE may be required under the FOIA and the EIRs to disclose Information concerning the Supplier or the Goods and/or Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances ACE shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

16.3 Notwithstanding any other provision in the Agreement, ACE shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods and/or Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

17 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

17.1 In this clause 17, the terms “processed”, “data controller” and “data processor” shall have the same meanings given to them under Data Protection Legislation.

17.2 ACE and the Supplier acknowledge that for the purposes of Data Protection Legislation, ACE is the data controller and the Supplier is the data processor of any Personal Data.

17.3 The Supplier shall and shall procure that its sub-contractors shall comply with all Data Protection Legislation in relation to any Personal Data processed relating to or originating from ACE, its employees or supported organisations or clients. Neither party shall, and the Supplier shall procure that no sub-contractors shall, by act or omission put the other party in breach of the Data Protection Legislation.

17.4 Without prejudice to clause 17.6(c), the Supplier shall, and shall procure that each of its sub-contractors shall, process Personal Data only:

- (a) in such manner as is necessary for the Services;
- (b) in accordance with documented instructions received from ACE; and
- (c) for the Term.

17.5 Upon request by ACE, the Supplier shall promptly provide to ACE such copies of any Personal Data provided by or on behalf of ACE to the Supplier under this Agreement and do such other acts in relation to the Personal Data or any part thereof as ACE shall request which are required in order for ACE to comply with any of its obligations under the Data Protection Legislation.

17.6 Without limiting clause 17.3, the Supplier represents, warrants and undertakes to ACE that the Supplier:

- (a) shall not by any act or omission put ACE in breach of the Data Protection Legislation;
- (b) shall at all times comply with, and ensure that at all times its Staff and sub-contractors:
 - (i) are informed of the confidential nature of the Personal Data;
 - (ii) have undertaken training in the laws relating to handling Personal Data;

- (iii) comply with, any guidelines, codes of practice, policies or other requirements notified to it by ACE in connection with processing Personal Data; and
 - (iv) are aware both of the Supplier's duties and their personal duties and obligations under Data Protection Legislation;
- (c) shall not allow any sub-contractors to have access to, receive or process Personal Data and the Supplier shall not transfer any Personal Data to any other person (including, without limitation, any data processor or other contractor) without ACE's prior written consent (such consent to be at the sole discretion of ACE) and unless permitted under Data Protection Legislation and, where consent is given by ACE, the Supplier shall only undertake such processing in accordance with ACE's instructions;
- (d) shall keep all Personal Data confidential and has in place now and shall on a continuing basis take all reasonable appropriate technical and organisational measures to keep all Personal Data confidential and secure and to protect against unauthorised or unlawful processing, accidental loss, destruction damage, alteration, disclosure or access;
- (e) shall take all reasonable steps to ensure the reliability of any of its Staff who have access to Personal Data processed in connection with this Agreement and to ensure that such Staff understand the Suppliers obligations under this clause 17 in respect of the Personal Data;
- (f) shall provide such information and, on reasonable prior notice, allow for and contribute to audits, including inspections, conducted by ACE or an auditor mandated by ACE as is reasonably necessary to enable ACE to satisfy itself of the Supplier's compliance with this Agreement and the Data Protection Legislation;
- (g) shall not contact ACE's supported organisations or clients directly or collect Personal Data in relation to ACE's supported organisations or clients without ACE's prior written consent;
- (h) without prejudice to clause 17.6(c), shall, and shall procure that its sub-contractors shall, not process or direct the processing of any Personal Data outside of the European Economic Area unless and until:
 - (i) the Supplier and each sub-contractor proposing to process Personal Data have entered into Model Clauses with ACE; or

- (ii) in accordance with the prior written consent of ACE (such consent to be at the sole discretion of ACE);
 - (i) without prejudice to clause 17.6(c), where any sub-contractors process Personal Data the Supplier shall ensure that sub-contracts entered into with approved sub-contractors shall include provisions equivalent to those in this clause 17; and
 - (j) shall on termination of this Agreement, and at any time on the request of ACE, either return the Personal Data in the format requested by ACE or destroy the Personal Data (including all copies of it), in either case immediately and confirm in writing that it has complied with this obligation.
- 17.7 Without prejudice to clause 17.6(c), the Supplier shall not and shall procure that each of its sub-contractors shall not without the prior written consent of ACE:
 - (a) use or permit any third party to use any Personal Data otherwise than for the sole benefit of ACE and in accordance with the terms of this Agreement;
 - (b) disclose any Personal Data except on a need to know basis to Staff directly concerned with the provision of the Services; or
 - (c) disclose any Personal data to any persons to whom the Supplier is able to disclose such Personal Data in accordance with the terms of this Agreement unless such persons are made aware, prior to disclosure, of the confidential nature thereof and that they owe a duty of confidence to ACE in respect of such information and to use all reasonable endeavours to ensure that such persons comply with such duty.
- 17.8 The Supplier shall notify ACE promptly and in any event within five (5) Business Days if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to ACE's obligations and/or the rights of a Data Subject under the Data Protection Legislation; and
 - (c) any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement; and

in each case, the Supplier shall promptly provide ACE with its full cooperation and assistance as is reasonably required by ACE in order to respond to and resolve the request, complaint or other communication within any time frames imposed by applicable Data Protection Legislation.

17.9 The Supplier shall:

- (a) notify ACE immediately on becoming aware of any Personal Data Breach; and
- (b) promptly following notification, provide such information and assistance as is reasonably required by ACE in order for ACE to notify the Personal Data Breach to the Information Commissioner and/or any Data Subjects, in accordance with Data Protection Legislation.

17.10 If any Personal Data is lost or corrupted as a result of any act or omission of the Supplier or any of its sub-contractors, the Supplier shall restore Personal Data at its own expense.

17.11 If the Supplier fails to comply with the provisions of this clause 17 then it shall notify ACE in writing of any failure to comply within 24 hours of the Supplier becoming aware of such failure to comply. Following notification, ACE shall be entitled in its absolute discretion, to terminate this Agreement on written notice. ACE may, in addition to or instead of terminating this Agreement, require the Supplier to undertake one or more of the following:

- (a) immediately take such remedial action as is required to ensure compliance with this Agreement and/or the Data Protection Legislation and prevent and/or remedy any breach;
- (b) provide such information as is reasonably required by ACE in respect of the incident leading to such notification; and/or
- (c) cease to process Personal Data, return all materials containing Personal Data and delete all copies.

17.12 The Supplier shall on demand fully and effectively indemnify, keep indemnified, defend and hold harmless ACE and its respective directors, officers, agents, employees, successors and assigns from any and all losses, including all claims, expenses, damages, proceedings, costs, and other liabilities resulting from or in connection with any failure to comply with the provisions of this clause 17 by the Supplier, its Staff, sub-contractors, third party agents, contractors and associated persons.

18 LIABILITY

18.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by ACE if and to the extent that it is caused by the negligence or wilful misconduct of ACE or by breach by ACE of its obligations under the Agreement.

18.2 Subject always to clauses 18.4 and 18.5:

- (a) the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Limit of Liability; and
- (b) except in the case of claims arising under clauses 13.6, 17.11 and 26.3, in no event shall the Supplier be liable to ACE for any:
 - (i) indirect loss or damage;
 - (ii) special loss or damage; and/or
 - (iii) consequential loss or damage.

18.3 Subject to clause 18.4, the aggregate liability of ACE in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Charges.

18.4 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence or that of its Staff;
- (b) fraud or fraudulent misrepresentation by it or that of its Staff; or
- (c) any other matter which, by law, may not be excluded or limited.

18.5 The Supplier's liability under the indemnity in clause 13.6, 17.11 and 26.3 shall be unlimited.

19 INSURANCE

19.1 Without prejudice to ACE's other rights under this Agreement, the Supplier shall, during the Term, take out and maintain with reputable insurers such policies of insurance as may be necessary in accordance with Good Industry Practice to insure the Supplier against all manner of risks that might arise out of the acts or omissions of the Supplier or otherwise in connection with the Supplier's performance of its obligations under this Agreement, including, without limitation, in respect of the following risks:

- (a) employer's liability and any other insurances required by Law with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £10 million (ten million pounds sterling) in respect of any one occurrence;

- (b) professional indemnity insurance with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
 - (c) product liability cover with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £[insert amount] ([insert amount] pounds sterling) in respect of any one occurrence;
 - (d) loss, damage or destruction of any of ACE's property under the custody and control of the Supplier, with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £[insert amount] ([insert amount] pounds sterling) in respect of any one occurrence; and
 - (e) public liability insurance for a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £10 million (ten million pounds sterling) in respect of any one occurrence.
- 19.2 On request, the Supplier shall submit to ACE accurate details of its insurance cover, together with documentary evidence that such insurance remains properly maintained.
- 19.3 The Supplier shall:
- (a) not by its acts or omissions cause any insurance cover or policy to become void or voidable; and
 - (b) immediately notify ACE in writing of any cancellation notice received from any insurer or of any material change in cover type or amount.
- 19.4 From the Effective Date, the Supplier shall notify ACE in writing of any employer's liability or public liability incident arising out of or in connection with this Agreement which:
- (a) has the a potential to exceed £25,000 (twenty-five thousand pounds sterling) (excluding costs); and/or
 - (b) irrespective of the claim's value, which may reasonably be considered to have the potential to adversely affect the reputation of ACE,
- within five (5) days of such incident occurring.
- 19.5 The Supplier shall keep ACE informed and up-to-date on the progress of any incident referred to in Clause 19.4 and related claims, decisions taken in respect of liability and any movement of reserves with respect thereto.

- 19.6 The Supplier shall take all reasonable steps to deal with any Supplier Dispute so as to mitigate the extent of the losses of and/or damage to ACE's reputation and any disruption to its activities.
- 19.7 To the extent permitted by law, ACE shall have the right, at its sole option, to contribute opinion and have such opinion taken into account in the Supplier's handling of any Supplier Dispute.
- 19.8 Nothing in this clause 19 shall oblige the Supplier to breach any condition imposed by its insurers from time to time, provided that the Supplier shall take all commercially reasonable steps to seek such third party consents as may be required to allow ACE to become involved in a Supplier Dispute.

20 FORCE MAJEURE

- 20.1 Neither Party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. Subject to Clause 20.3, the date for performance of any affected obligations will be suspended for a period equal to the delay caused by the Force Majeure Event.
- 20.2 If a Party is delayed in or prevented from performing its obligations under this Agreement by a Force Majeure Event, such Party shall:
- (a) give notice in writing of such delay or prevention to the other Party specifying the nature and extent of the Force Majeure Event immediately on becoming aware of it; and
 - (b) use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations.
- 20.3 If the Force Majeure Event continues for a period of 30 (thirty) days or more following notification, then either Party may terminate this Agreement by giving not less than 10 (ten) days' prior written notice to the other Party.
- 20.4 ACE shall not be liable to pay the Charges in relation to any Goods and/or Services that are not provided by the Supplier due to a Force Majeure Event.

21 TERMINATION

- 21.1 ACE may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

21.2 Without prejudice to any other right or remedy it might have, ACE may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

- (a) (without prejudice to clause 21.2(e)), is in material breach of any obligation under the Agreement which is not capable of remedy;
- (b) repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- (c) is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- (d) undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- (e) breaches any of the provisions of clauses 11.2, 15, 16, 17 22 and 25;
- (f) becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 21.2(f)) in consequence of debt in any jurisdiction; or
- (g) fails to comply with legal obligations in the fields of environmental, social or labour law

or if this Agreement is subject to:

- (h) a Declaration of Ineffectiveness in accordance with the provisions of clause 22; or
- (i) a Public Procurement Termination Event.

21.3 The Supplier shall notify ACE as soon as practicable of any change of control as referred to in clause 21.2(d) or any potential such change of control.

21.4 The Supplier may terminate the Agreement by written notice to ACE if ACE has not paid any undisputed amounts within 90 days of them falling due.

21.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of

the Parties under this clause and clauses 2, 3.2, 10.1, 10.2, 10.6, 10.7, 11, 13, 14.2, 15, 16, 17, 18, 21.6, 23.4, 26.3, 27 and 28.9 or any other provision of the Agreement that either expressly or by implication has effect after termination.

21.6 Upon termination or expiry of the Agreement, the Supplier shall:

- (a) give all reasonable assistance to ACE and any incoming supplier of the Goods and/or Services; and
- (b) return all requested documents, information and data to ACE as soon as reasonably practicable.

22 DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT

22.1 In the event that a Court makes a Declaration of Ineffectiveness, ACE will promptly notify the Supplier. The Parties agree that the provisions of clause 21.6 and this clause 22 will continue to apply as from the time when the Declaration of Ineffectiveness is made.

22.2 The Declaration of Ineffectiveness will not prejudice or affect any right, liability or remedy which has accrued or will accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness.

22.3 Consistent with ACE's rights of termination implied into the Agreement by Public Contracts Regulations 2015, in the event of a Public Procurement Termination Event, ACE shall promptly notify the Supplier and the provisions of clause 21.6 and this clause 22 shall apply as from the date of receipt by the Supplier of the notification of the Public Procurement Termination Event.

22.4 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.

22.5 During any Court proceedings seeking a Declaration of Ineffectiveness or following notification of a Public Procurement Termination Event, ACE may require the Supplier to prepare a contingency plan with the effect of achieving

- (a) An orderly and efficient cessation of the Agreement or a transition of any Services to ACE or such other entity as ACE may specify; and
- (b) Minimal disruption or inconvenience to ACE or to ACE's supported organisations or clients,

And the Parties agree that this shall have effect in the event a Declaration of Ineffectiveness is made or a Public Procurement Termination Event occurs.

- 22.6 Where there is any conflict between the provisions of clause 21.6 and this clause 22 and the contingency plan then the clauses of this Agreement shall take precedence.
- 22.7 The parties will comply with their respective obligations under any contingency plan (as agreed by the parties, or where agreement cannot be reached, as reasonably determined by ACE) in the event that a Declaration of Ineffectiveness is made or a Public Procurement Termination Event occurs.
- 22.8 ACE will pay the Supplier's reasonable costs in assisting ACE in preparing agreeing and complying with the contingency plan. Such costs will be based on comparable costs or as otherwise reasonably determined by ACE. ACE will not be liable to the Supplier for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to any Declaration of Ineffectiveness or Public Procurement Termination Event.

23 COMPLIANCE

- 23.1 The Supplier shall promptly notify ACE of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. ACE shall promptly notify the Supplier of any health and safety hazards which may exist or arise at ACE's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 23.2 The Supplier shall:
- (a) comply with all ACE's health and safety measures while on ACE's premises; and
 - (b) notify ACE immediately in the event of any incident occurring in the performance of its obligations under the Agreement on ACE's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 23.3 The Supplier shall:
- (a) perform its obligations under the Agreement in accordance with all applicable equality law and ACE's equality and diversity policy as provided to the Supplier from time to time; and
 - (b) take all reasonable steps to secure the observance of clause 23.3(a) by all Staff.

23.4 The Supplier shall supply the Goods (including any packaging) and/or Services in accordance with ACE's environmental policy as provided to the Supplier from time to time.

23.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

24 ANTI-DISCRIMINATION

24.1 The Supplier shall comply with all anti-discrimination legislation from time to time in force including, but not limited to, the Equalities Act 2010 and any subordinate or associated legislation.

24.2 The Supplier shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, sexual orientation or disability including when deciding about recruiting, training or promoting staff.

24.3 The Supplier shall, as far as possible, comply with all statutory codes of practice issued from time to time by the Equality and Human Rights Commission or any of its predecessor bodies such as the Commission for Racial Equality. The Supplier shall provide any information ACE requires to determine whether the Supplier is complying with these codes of practice.

24.4 When working on ACE's premises, the Supplier shall comply with ACE's employment policies and codes of practice relating to diversity and equal employment opportunities.

24.5 The Supplier shall monitor the representation among its Staff of persons of different groups. If it seems that any group or groups are not represented or are under-represented among your staff in a particular type of job, the Supplier must, where appropriate and reasonable:

- (a) place and use job advertisements to reach members of the specific groups to encourage their applications;
- (b) use employment agencies and careers offices in areas where members of such groups live and work;
- (c) use recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups;

- (d) train and encourage members of its Staff from such groups so they may apply for promotion or transfer to do the type of job in which such groups are under-represented.

24.6 The Supplier shall ensure that it maintains effective whistle-blowing policies whereby its employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.

25 PROTECTION OF CHILDREN AND VULNERABLE ADULTS

25.1 This clause 25 will only apply if in providing Services the Supplier or its sub-contractors or Staff will supervise, care or have significant direct contact with a Vulnerable Person.

25.2 In this clause, "Vulnerable Person" means:

- (a) persons under the age of 18; and
- (b) people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.

25.3 The Supplier shall consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the written consent of the legally authorised carer or guardian of the Vulnerable Person before having of any significant direct contact with the Vulnerable Person.

25.4 Without limiting sub-clauses 25.2 and 25.3 the Supplier shall adopt and carry out a written policy and set of procedures to protect Vulnerable Persons if:

- (a) it is a company or partnership, or they are an individual who employs other persons; and
- (b) in the course of providing the Services, the Supplier's Staff or sub-contractors supervise, care for or have significant direct contact with Vulnerable Persons.

25.5 As part of the procedures mentioned in sub-clause 25.4 the Supplier shall check the backgrounds of and view disclosures from the Disclosure and Barring Service for your potential employees, contractors or volunteers who will, in the course providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.

25.6 If the Supplier is the person having significant direct contact with Vulnerable Persons, it shall, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian its consent to having it (or its Staff or sub-

contractors, as appropriate) background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.

25.7 The Supplier shall comply with sub-clauses 25.3 to 25.6 inclusive even if it is not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.

25.8 ACE cannot advise the Supplier, its Staff or any sub-contractors of their legal obligations in relation to dealings with Vulnerable Persons, and this clause should not be seen as such. If the Supplier, its Staff or any sub-contractors have any queries about their obligations, ACE would strongly advise seeking independent legal advice and also contacting the National Society for Prevention of Cruelty to Children (www.nspcc.org.uk)

26 PREVENTION OF FRAUD AND CORRUPTION

26.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

26.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify ACE immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

26.3 If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including ACE) ACE may:

- (a) terminate the Agreement and recover from the Supplier the amount of any loss suffered by ACE resulting from the termination, including the cost reasonably incurred by ACE of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by ACE throughout the remainder of the Agreement; or
- (b) recover in full from the Supplier any other loss sustained by ACE in consequence of any breach of this clause.

27 DISPUTE RESOLUTION

27.1 The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.

- 27.2 If a Dispute arises between ACE and the Supplier during the Term in relation to any matter which cannot be resolved by local operational management either Party may refer the matter for determination in accordance with the procedure set out in clause 27.3.
- 27.3 A Dispute referred for determination under clause 27.2 shall be resolved as follows:
- (a) by referral in the first instance to the decision of the Initial Contact for each of the Parties; and
 - (b) if a Dispute is not resolved within 14 days of its referral pursuant to clause 27.3(a), such Dispute shall be referred to the Secondary Authority for each of the Parties; and
 - (c) if a Dispute is not resolved within 21 days of its referral pursuant to clause 27.3(b) such Dispute shall be referred to the Senior Authority for each of the Parties.
- 27.4 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 27.3(b), the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 27.5 If the Parties fail to appoint a Mediator within one month, or 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.
- 27.6 Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this clause 27, such clause not applying in respect of any circumstances where such remedies are sought.

28 GENERAL

- 28.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 28.2 The Supplier warrants and represents that during the Term it shall not accept work from other sources that will in any way impair or affect its ability to provide the Goods and/or Services and comply with the terms of this Agreement.

- 28.3 The Supplier must make sure that neither it nor any of its Staff or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between their interests or the interests of its Staff or sub-contractors and the Supplier's obligations under this Agreement. You must disclose to us the particulars of any conflict of interest that arises.
- 28.4 A person who is not a party to the Agreement 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.
- 28.5 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 28.6 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 28.7 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 28.8 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 28.9 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 28.10 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

29 NOTICES

- 29.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 29.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 29.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 29.3 Notices under clauses 20 (Force Majeure) and 20.1 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 29.1.

30 CHANGE CONTROL PROCEDURES

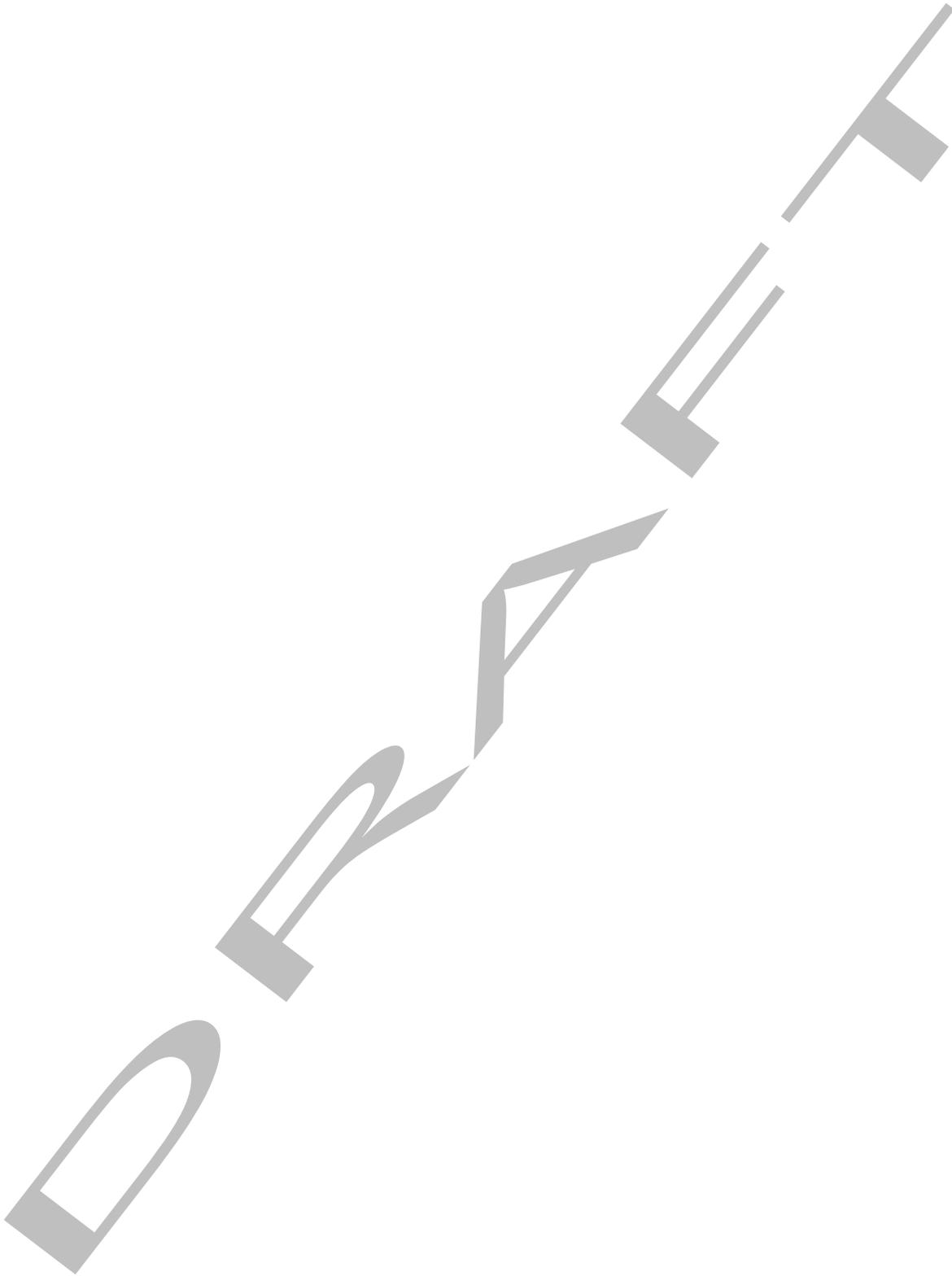
- 30.1 In the event that either party desires to change the terms of this Contract, the following procedures will apply:
- (a) The Party requesting the change will deliver a "Change Request" (in the form contained in Annex 4 to this Agreement) which describes:
 - (i) the nature of the change
 - (ii) the reason for the change
 - (iii) the effect that the requested change will have on the scope or specification of the Goods and/or Services
 - (iv) any changes to the Charges and the Term.
 - (b) Upon receipt of a Change Request, the receiving Party's authorised representative will contact his/ her counterpart within 5 working days to discuss and agree the Change Request. The parties will negotiate the proposed changes to the Agreement in good faith and agree a timeline in which to finalise the Change Notice.
 - (c) Neither party is obliged to agree to a Change Request, but if the parties do agree to implement such a Change Request, the appropriate authorised representatives of both parties will sign the Change Request which will be effective from the date set out in the Change Request.

- (d) If there is any conflict between the terms and conditions set out in the Agreement and the Change Request, then the terms and conditions set out in the most recent fully executed Change Request will apply.

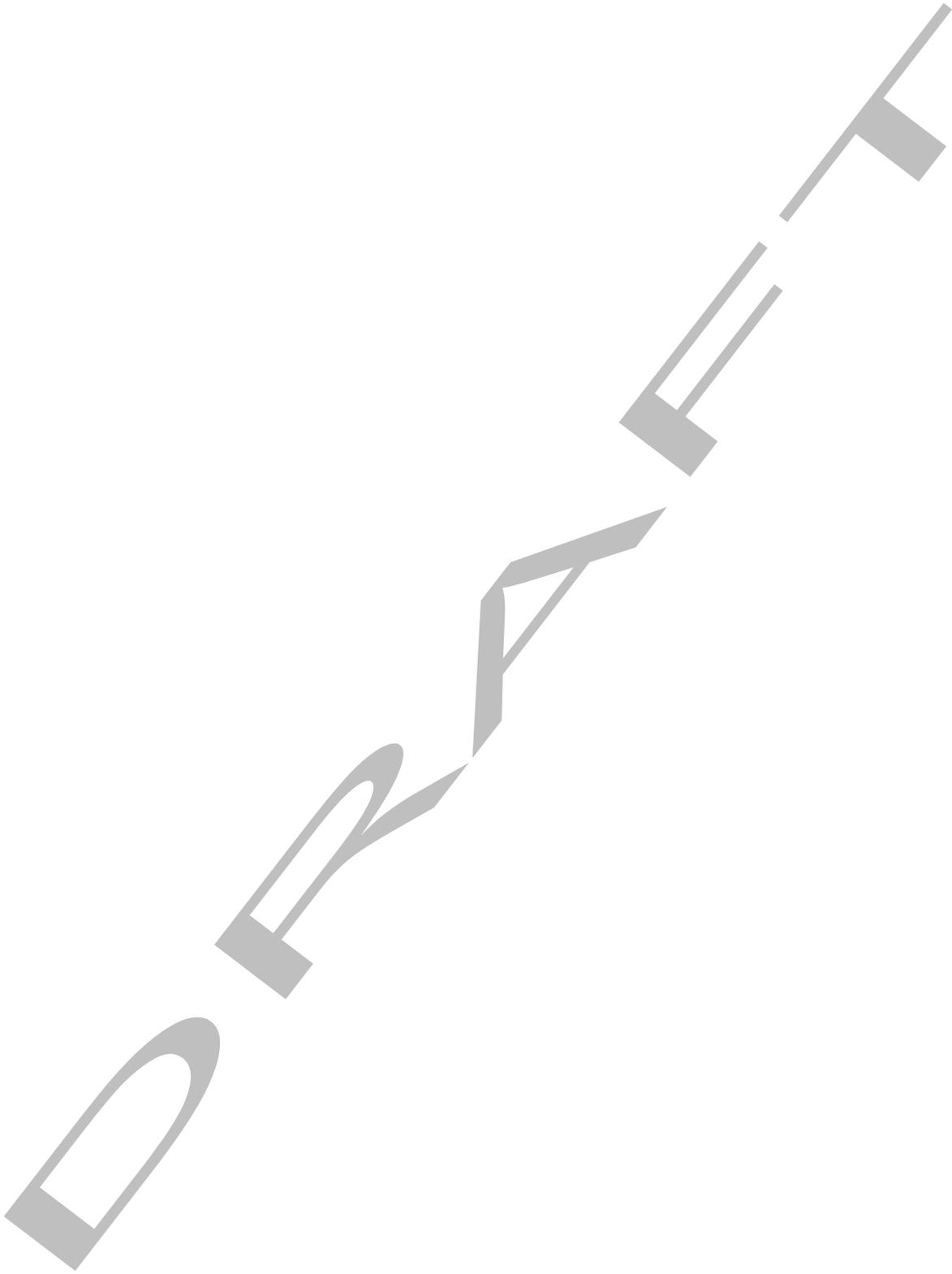
31 GOVERNING LAW AND JURISDICTION

- 31.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

[Annex 2
Charges]



[Annex 3
Specification]



Annex 4 - Change Control Notice

Agreement Reference:					
1.	Change Request Number:				
2.	Requested Amendments to Agreement (including reasons):				
2.1	Effective date:				
This change is effective from: _____					
2.2	The Contract Term is amended as follows:				
This contract will commence on: _____					
And will conclude on : _____					
3.	Cost impact				
3.1	The Charges are amended as follows:				
	Quantity	Unit cost (£)	Net cost (£)	VAT (£)	Gross cost (£)
Original Contract Value					
New contract Value					

3.2 New Agreement terms:				

Both ACE and the Supplier agree that they are bound by the terms and conditions set out in this Change Request and, except as set out in this Change Request, all terms and conditions of the Agreement remain in full force and effect

Signed on behalf of

**The Arts Council of England trading as
Arts Council England**

by:

Signed [on behalf of]/ [by]

by:

Signature of authorised officer

Signature [of authorised person]

Name of authorised officer (please print)

[Name of authorised person (please print)]

Date

Date