TERMS AND CONDITIONS OF CONTRACT

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1 DEFINITIONS

The 'Buyer' means the participating organisation who is placing the official Purchase order and its employees, sub-contractors or agents.

The 'Supplier' means the person, firm or company to whom the official Purchase Order is addressed and any employees, sub-contractors or agents of said person, firm or company.

- 'Goods' means the materials, articles, works and services described in the Agreement.
- 'Package' means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
- 'Authorised Officer' means the Buyer's employee authorised, either generally or specifically, by the Buyer to sign the Buyer's Purchase Order.
- 'Purchase Order' means the Buyer's authorised Purchase Order.
- 'Order Amendment' means the Buyer's authorised Order Amendment or series of Order Amendments, each order amendment having precedence over any earlier Order Amendment.
- 'Price' has the meaning given in condition 3 below.
- 'Sale of Goods Act 1979' shall mean the Sale of Goods Act 1979, as is amended by the Sale and Supply of Goods Act 1994.
- 'Supply of Goods and Services Act 1982' shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

2 THE AGREEMENT

The Agreement shall not include any of the Supplier's Conditions of Sale, notwithstanding reference to them in any document. Should this agreement however, be held by a court of competent jurisdiction to include the Supplier's Terms and Conditions of Sale, then in the event of any conflict or apparent conflict these Terms and Conditions of Purchase shall always prevail over the Supplier's Terms and Conditions of Sale. Delivery of Goods in response to a Purchase Order or Order Amendment shall be taken to imply that the Supplier has accepted the Terms and Conditions of the Agreement.

3 PRICE

The Supplier will supply the Goods or Services in accordance with the price stated in the Agreement. The price shall include storage, packing, insurance, delivery, installation and commissioning (where applicable), but shall exclude VAT.

4 VARIATIONS

The Buyer shall have the right, before delivery to send the Supplier an Order Amendment adding to, deleting or modifying the Goods, or Service to be provided. If the Order Amendment will cause a change to the price or delivery date the Supplier must suspend performance of the Purchase Order and notify the Buyer without delay, calculating the new price and delivery date at the same level of cost and profitability as the original price,. The Supplier must allow the Buyer at least 10 working days to consider any new price and delivery date. The Order Amendment shall take effect when, but only if the Authorised Officer accepts in writing the new price and delivery date within the time stipulated by the Supplier. If the Authorised Officer fails to confirm the Order Amendment within the time stipulated by the Supplier then performance of the Agreement shall immediately resume as though the said Order Amendment had not been issued (except that the Buyer may still exercise right of cancellation in accordance with condition 5).

5 BUYER'S RIGHT OF REJECTION AND CANCELLATION

5.1 The Buyer shall be entitled to reject any Goods, which are not of the type or quality ordered, or in any respect not in accordance with the requirement of the Agreement. On notice of rejection the Supplier, at their expense, shall by any means, give the Supplier notice of rejection within three days of deliver.

5.2 In addition to the Buyer's other rights of cancellation under this Agreement, the Buyer may cancel the Purchase Order and any Order Amendment thereto at any time by sending the Supplier a notice of termination. The Supplier will comply with any instructions that the Buyer may issue with regard to the Goods. If the Supplier submits a termination claim then the Buyer will pay the Supplier the costs of any commitments, liabilities or expenditure, excluding loss of profits, which in the Buyer's reasonable opinion were a consequence of this cancellation. The total of all payments made or due to the Supplier under this Agreement, including any termination payment shall not exceed the price of the Goods. If the Supplier fails to submit a termination claim within three months of the date of the Buyer's notice of termination then the Buyer shall have no further liability under the Agreement.

6 SUBSTITUTIONS

The Supplier is expected to supply all of the Goods covered within this Agreement. If the Supplier is unable to supply the exact type of Goods ordered, then the Supplier shall advise the Buyer accordingly and shall, with the prior agreement of the Buyer, supply alternative Goods of equal or better quality at the same prices as the Goods originally ordered.

7 QUALITY AND DESCRIPTION

7.1 The goods shall:
Conform in every respect with the provision of the Agreement
Be capable of all standards of performance specified in the Agreement
Be fit for any purpose made known to the Supplier expressly or by implication and in this respect the Buyer shall rely on the Supplier's skill and judgement
Be new unless otherwise specified on the Purchase Order and be of sound materials and skilled and careful workmanship
Correspond to their description or any samples, patterns, drawings, plans and specifications referred to in this Agreement
Be of satisfactory quality
Comply with all current legislation

7.2 Unless specifically required under the Agreement, there shall be no asbestos content in the Goods.

8 WORK ON THE BUYER'S PREMISES

If the Agreement involves any works or services, which the Supplier performs on the Buyer's premises, then the following conditions shall apply:

8.1 The Supplier shall ensure that their employees, their sub-contractors and any other person associated with them will adhere in every respect to the obligations imposed upon them by current safety legislation.

8.2 The Supplier shall ensure that their employees, their sub-contractors and any other person associated with them will comply with any regulations, or instructions that the Buyer may notify to the Supplier in writing.

9 PROGRESS AND INSPECTION

9.1 The Supplier shall at their expense provide any programmes of manufacture and delivery that the Buyer may reasonably require. The Supplier shall notify the Buyer without delay in writing if their progress falls behind or may fall behind any of these programmes.

9.2 The Buyer shall have the right to check progress at the Supplier's works or the works of sub-contractors at all reasonable times, to inspect and to reject Goods that do not comply with the Agreement. The Supplier's sub-contractors shall reserve such rights for the Buyer.

9.3 Any inspection or approval shall not relieve the Supplier from their obligations under this Agreement.

10 PACKAGING

Unless otherwise stated in the Agreement, all packaging shall be non-returnable. If the Agreement states that packaging is returnable, the Supplier must give the Buyer full disposal instructions before the time of delivery. The packaging must be clearly marked to show to whom it belongs. The Supplier must pay the cost of all carriage and handling for the return of the packaging. The Buyer shall not be liable for any packaging lost or damaged in transit.

11 SAFETY

The Supplier shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials and all provisions relating to food.

12 DELIVERY

12.1 The Goods shall be properly packed, secured and despatched at the Supplier's expense to arrive in good condition at the time or times and the place or places specified in the Agreement. If the Supplier fails to obtain a receipt from an authorised person the Buyer disclaims all responsibility for the security of the Goods delivered. Under no circumstances shall Goods be left at any premises unattended. Deliveries shall only be made during those hours when the establishment is normally open for the receipt of Goods.

12.2 For each and every delivery made under this Agreement the Supplier shall issue a delivery note stating the full delivery address and a full and proper description of the Goods supplied, quantity and official Purchase Order number. The delivery note shall accompany the Goods from the place of packing to the place of delivery.

12.3 The Buyer shall retain one copy of the delivery note and the Supplier shall ensure that they retain documentation proof of delivery made. The Supplier shall allow sufficient time for Goods to be properly examined and to obtain any necessary receipts.

12.4 If the Supplier or their carrier delivers any Goods at the wrong time or to the wrong address then the Buyer may deduct from the price any resulting costs of storage or transport.

13 LATE DELIVERY

If the Goods or any part of them are not delivered by the time or times specified in the Agreement then the Buyer might, by written notice, cancel any undelivered balance of the Goods. The Buyer may also return for full credit any Goods that in the Buyer's opinion cannot be used owing to this cancellation at the Supplier's expense. The Buyer may have the Goods supplied by alternative means and any additional costs reasonably so incurred shall be at the Supplier's expense. This shall not affect any other rights the Buyer has.

14 PROPERTY AND RISK

14.1 The Supplier shall bear all risks of loss and damage to the Goods until they have been delivered and shall insure the Goods accordingly.

14.2 Ownership of the Goods shall pass to the Buyer:

- When the Goods have been delivered, but without prejudice to the Buyer's right of rejection under this Agreement, and
- If the Buyer makes any advance or stage payment, at the time such payment is made, in which case the Supplier must as soon as possible mark the Goods as the Buyer's property.

15 ACCEPTANCE

The Buyer shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of this Agreement. It is agreed that the Buyer may exercise the right of rejection notwithstanding any provision contained in Section 11, or Section 15A, or Section 30 (sub-sections 2A and 2B) or Section 35 of the Sale of Goods Act 1979. The Buyer shall give the Supplier a reasonable opportunity to replace the Goods with new Goods that conform to this Agreement, after which time the Buyer shall be entitled to cancel the Purchase Order and purchase the nearest equivalent Goods elsewhere and any additional costs reasonably so incurred shall be at the Supplier's expense. In the event of cancellation under this condition the Supplier shall promptly repay any monies paid under the Agreement without any retention or offset whatsoever. Cancellation of the Purchase Order under this condition shall not affect any other rights the Buyer may have. The Supplier must collect all rejected Goods within a reasonable time of rejection or the Buyer shall return them to the Supplier at the Supplier's risk and expense.

16 PAYMENT

Unless stated otherwise in the Agreement or on the Purchase Order the Buyer shall pay the Supplier within thirty days of receipt of a correct invoice and delivery of the Goods whichever is the later. The Supplier's invoice must be addressed to the department indicated on the Purchase Order and must quote the full Purchase Order number. The Buyer shall not be held responsible for delays in payment caused by the Supplier's failure to comply with the Buyer's invoicing instructions.

17 CORPORATE PURCHASE CARDS

The Supplier shall if requested by the Buyer accept the use of corporate purchasing cards at no additional cost to the Buyer.

18 THE SUPPLIER'S WARRANTY

It is expressly agreed between both parties that:

18.1 The Supplier shall promptly make good at their expense any defect in the Goods that the Buyer discovers under proper usage during the first twelve months of actual usage or eighteen months from the date of acceptance by the Buyer, whichever period shall expire first. Such defects may arise from the Supplier's faulty design, the Supplier's erroneous instructions as to use, or inadequate or faulty materials, or poor workmanship, or any other breach of the Supplier's obligations whether in this Agreement or in Law.

18.2 Repairs or replacements will themselves be covered by the above warranty, but for a period of twelve months from acceptance by the Buyer.

18.3 The Supplier will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least ten years from the date of delivery of the Goods.

19 INDEMNITY AND INSURANCE

19.1 The Supplier shall indemnify the Buyer against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Buyer may incur either at common law or by statute in respect of personal injury to or death of any person, or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of ourselves or any person for whom the Buyer is responsible), which shall have occurred in connection with any work executed by the Supplier under this Agreement or shall be alleged to be attributable to some defect in the Goods.

19.2 This Purchase Order is given on condition that (without prejudice to the generality of Condition 17A) the Supplier will indemnify the Buyer against all losses, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Buyer may incur either at Common Law or by statute (other than as a result of any default or neglect of the Buyer or of any person for whom the Buyer is responsible) in respect of personal injury to or death of any of the Supplier's or the Buyer's employees, agents, sub-contractors or other representatives whilst on the Buyer's premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.

19.3 The Supplier will indemnify the Buyer against any and all losses, costs, expenses and liabilities caused to the Buyer whether directly or as a result of the action, claim or demand of any third party by reason or any breach by the Supplier of these conditions or any terms or obligations on their part implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any other statute or statutory provision relevant to the Agreement or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of the Buyer's rights under Condition 14.

19.4 The Supplier shall hold satisfactory insurance cover with a reputable insurer to fulfil their insurance obligations for the duration of this Agreement including public liability insurance cover of at least £2M (two million pounds Sterling). The Supplier shall effect insurance against all those risks arising from their indemnity in Condition 17C above. Satisfactory evidence of such insurance and payment of current premiums shall be shown to the Buyer upon request.

20 RECOVERY OF SUMS DUE

Whenever under the Agreement any sums of money shall be recoverable from or payable by the Supplier, they may be deducted from any sums then due, or which at any later time becomes due to the Supplier under this Agreement or under any other Agreement the Supplier may have with the Buyer.

21 FORCE MAJEURE (MATTERS BEYOND CONTROL)

21.1 For the purposes of the Agreement 'Force Majeure' shall mean:

- war & other hostilities (whether war declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo,
- rebellion, revolution, insurrection, military or usurped power or civil war,
- riot, commotion or disorder except where restricted to employees of the Supplier or its Sub-Suppliers,
- earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure,
- a general industrial dispute not limited to the employees of the Supplier or the employees of any of its sub-Contractors or sub-suppliers.

21.2 If either party considers that any circumstance of 'Force Majeure' has occurred which may affect materially the performance of its obligations than he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the 'Force Majeure' event.

21.3 Neither party shall be considered to be in default of its obligations under the Agreement to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Agreement and which was not foreseeable at the date of the Agreement.

21.4 If the performance of the obligations of either party under the Agreement is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period less than 30 days then during that period the Agreement shall be considered as suspended. Upon the ending of the Force Majeure event the contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the Force Majeure event as may be agreed between the parties, or, in default of such agreement, as may be determined by an Expert.
Notwithstanding such suspension the Supplier shall use best endeavours to assist the Buyer in the performance of the Agreement.

21.5 If performance of the obligations of either party under the Agreement is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Agreement shall be terminated by mutual consent and subject to Clause 21.6 below neither party shall be liable to the other as a result of such termination.

21.6 If the Agreement is so terminated then subject to the transfer to the Buyer of the benefit referred to in the paragraph 21.7 the Buyer shall pay to the Supplier such reasonable sum as may be agreed between the parties or in default of agreement as may be determined by Expert Determination in respect of costs incurred and commitments already entered into by the Supplier and, or the Buyer at the date of the Force Majeure notice, less any payments already made to the Supplier at the date of the Force Majeure notice. If the amount of such advance payments made to the Supplier exceeds the sum due to the Supplier under this sub-clause then the Supplier shall repay the balance to the Buyer.

21.7 The Supplier shall transfer to the Buyer the benefit of all work done by the company, its sub-contractors and sub-suppliers in the performance of the Agreement up to the date of the Force Majeure notice and if applicable, it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to the Buyer prior to the Force Majeure notice or will do so on the payment under the above sub-clause.

22 ARTICLES ON LOAN

All tools, materials, drawings, specifications and other equipment and data ('The Articles') loaned by the Buyer to the Supplier in connection with the Agreement shall always remain the Buyer's property and be surrendered to the Buyer upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Supplier solely for the purpose of completing the Agreement. The Supplier shall not copy any

of the Articles without the consent in writing of the Authorised Officer of the Buyer. Until the Supplier returns all the Articles to the Buyer they shall be at the Supplier's risk and insured by the Supplier at their expense. All scrap arising from the supply of such Articles must be disposed of at the Buyer's discretion and all proceeds of sales of such scrap must be promptly paid to the Buyer in full.

23 OWNERSHIP OF RESULTS

If the Agreement involves design and/or development work:

23.1 All rights in the results of the work arising out of or deriving from this Agreement, including inventions, designs, copyright and knowledge, shall be the Buyer's property and the Buyer shall have the sole right to determine whether any letter patent, registered design, trademark and other protection shall be sought.

23.2 The Supplier shall promptly communicate to the Buyer all such results and shall if requested and at the Buyer's expense do all acts and things necessary to enable the Buyer or their nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to the Buyer or their nominee.

23.3 The Supplier shall ensure that all technical information (including computer programmes and programming information) arising out of or deriving from this Agreement is held in strict confidence except for any such information, which becomes public knowledge other than, by breach of this Agreement.

24 INFRINGEMENT OF PATENTS

With the exception of Goods made to the Buyer's design or instructions, the Supplier shall warrant that neither the Goods nor the Buyer's use of them will infringe any patent registered design trade mark, copyright or other protected right and undertake to indemnify the Buyer against all actions, claims, demands costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringements of any such right.

25 NOTICE

All notices and communications required to be sent by the Supplier or the Buyer in this Agreement shall be made in writing and sent by first class mail and if sent to the Supplier sent to their registered, or head office address and if sent to the Buyer sent to the address detailed on the Purchase Order and shall be deemed to have reached the party to whom it is addressed on the next business day following the date of posting.

26 AMENDMENT

No addition, alteration or substitution of these conditions will bind the Buyer or form part of the Agreement unless and until accepted in writing by the Authorised Officer of the Buyer.

27 INSOLVENCY AND BANKRUPTCY

If the Supplier shall:

27.1 Become insolvent or bankrupt or

27.2 Have a receiving order or administration order made against it or compound with its creditors, or

27.3 Being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of reconstruction or amalgamation) or

27.4 Carries on business under an administrator or administrative receiver for the benefit of its creditors or any of them#

Then the Buyer shall have the right forthwith by notice in writing to that party or to the administrator, administrative receiver or to the liquidator or to any person in whom the Contract shall have become vested terminate the Contract.

Alternatively the Buyer may give notice at his sole option give such administrator, administrative receiver, liquidator or other person the option of carrying out the Contract subject to its providing a guarantee for the due and faithful performance of the Contract in such form and up to such amount as the Buyer giving notice shall decide.

In the event of the Contract being terminated under this clause the Buyer giving notice shall have the right by prior notice to the Supplier to enter the Supplier's premises for the sole purpose of removing any item, equipment or materials which are its property and which are clearly marked and identified as such.

The exercise by the Buyer of his rights under this clause shall not prejudice any of his rights or obligations accrued prior to termination and the provisions referred to in the Clause relating to Termination for Default as continuing obligations shall apply.

28 CONFIDENTIALITY AND DATA PROTECTION

28.1 Each party shall treat the Agreement and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Agreement or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose same or any particulars thereof without the prior consent of the other or as may be permitted under the later provision of this clause.

28.2 The obligations expressed in sub-clause A above shall not apply to any information which:

- is or subsequently comes into the public domain otherwise than by breach of this clause
- is already in the possession of the receiving party without an accompanying obligation of confidentiality
- is obtained from a third party who is free to divulge the same
- is independently and lawfully developed by the recipient or its sub-contractor outside the scope of the Agreement

28.3 So far as it may be necessary for the performance of the Agreement or for the operation and maintenance of the subject matter of the Agreement each party may divulge any information to be kept confidential under sub-clause A above of this clause to their employees, agents and sub-contractors on a 'need to know' basis but undertake that they will take all steps necessary to ensure compliance by such employees, agents and sub-contractors with the obligations as to confidentiality expressed in this clause and will be responsible to the other party for any failure by any employee, agent or sub-contractor to comply with such obligations whether such employee, agent or sub-contractor was aware of them or not.

28.4 Both parties shall ensure that they, their employees, agents and sub-contractors shall observe the requirements of the Data Protection Act 1984 and all amendments or revisions thereto in the provision and use of the subject matter of the Agreement and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.

28.5 On the conclusion or termination of the Agreement both parties shall destroy all copies of confidential information obtained from the other and the obligations relating to confidentiality shall continue for a period of ten years from the date of the Agreement's conclusion, or termination.

29 PUBLICITY

Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

30 WAIVER

Any failure by the Buyer to insist at any time upon the performance of any of the terms, provisions or undertakings of the Supplier contained in the Agreement or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the Buyer's rights to require the future performance of any such term, provision or undertaking but the obligation of the Supplier with regard to the same shall continue in full force and effect.

31 TIME OF THE ESSENCE

The time for delivery and/or completion of the work to be performed under the Agreement shall be of the essence to the Agreement.

32 EXPERT DETERMINATION

Where under the Agreement any issue is to be determined by an Expert then:

32.1 Either party may give 7 days notice in writing to the other requiring expert determination by an Expert to be agreed between the parties or nominated as referred to below.

32.2 Within 14 days of receipt of such notice the parties shall have agreed on the choice of an Expert or in default of agreement the Expert shall be nominated by the President for the time being of the British Academy of Experts (or the Computer Society in respect of IT Agreements) on the application of either party

32.3 The Expert shall act in accordance with such procedure as the Expert may in his sole discretion decide provided that he shall act impartially as between the parties

32.4 The Expert shall reach a decision within 56 days of his appointment, which decision shall except in the case of fraud be final and binding on both parties

32.5 The Expert shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his duties as Expert unless the act or omission was done in bad faith.

33 DISPUTE RESOLUTION

33.1 If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Agreement, except any matter which under the Agreement is to be referred to 'Expert Determination', either party may give 7 days notice to resolve the dispute or difference through 'Alternative Dispute Resolution' (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be referred to Arbitration in accordance with sub-clause B.

33.2 Subject to sub-clause C below if any dispute or difference which may arise between the parties in connection with or arising out of the Agreement is referred to ADR mediation, but is not so settled as specified in sub-clause A, then neither party shall give notice to the other and such dispute or difference shall be referred to Arbitration. The parties shall agree on the appointment of a single arbitrator within 14 days after the date of such notice or in default of agreement the arbitrator shall be nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators. The arbitration shall be conducted in accordance with the current arbitration rules as published by the Chartered Institute of Arbitrators.

33.3 There are excluded from arbitration any proceedings brought by one party against the other which arise out of the failure by that other party to comply with the provisions of any binding agreement setting out the terms upon which the dispute or difference was settled as a result of or following from the ADR mediation procedure referred to in sub-clause A above.

34 ASSIGNMENT AND SUB-CONTRACTING

34.1 Neither party shall assign the Agreement or any of its rights or obligations thereunder without first having received the written approval of the other party, which approval shall not be unreasonably withheld (provided that the Buyer may assign the benefit of the Agreement to any of his associated or subsidiary companies, organisations etc or to any leasing or financing company of his choice).

34.2 The Supplier shall not sub-contract the Agreement or any part thereof without having first obtained the written permission of the Buyer which shall not be unreasonably withheld provided that this restriction shall not apply to sub-contracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the sub-contractor is named in the Agreement.

34.3 The Supplier shall be responsible for the acts, defaults and omissions of its sub-contractors, whether approval has been given to their appointment under this clause or not, as if they were his own and any consent given under this clause shall not relieve the Supplier of any of his obligations under the Agreement.

35 STATUTORY REGULATIONS

35.1 Both parties shall in all matters relating to the performance of the Agreement comply with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government departments or by local, or other authorities. The cost to each party of meeting the requirements of this clause shall be borne by that party.

35.2 If the cost to the Supplier of the performance of the contract shall be increased, or reduced by reason of the making after the date of the Agreement of any new law or order or regulation having the force of law as referred to in sub-clause A above or of the making of any change to any such law, order or regulation in force at the date of the Agreement that shall be applicable to the Agreement (other that any tax on profits), the amount of such increase or reduction shall be paid to or repaid by the Supplier as appropriate.

36 HEALTH AND SAFETY

36.1 The Supplier undertakes that he and his employees, agents and sub-contractors will at all times comply with all health and safety requirements relating to the carrying out of the work under the Agreement. Such requirements include in addition to the statutory laws and regulations any codes of practice and British Standards or their equivalent relating to health and safety, which may be applicable to the performance of the Agreement.

36.2 When the Supplier's employees, agents or sub-contractors are required to carry out work on the Buyer's premises then the Supplier undertakes that in carrying out the work they shall additionally comply with all the Buyer's rules and practices relating to safety and the conduct of persons working on the Buyer's premises.

36.3 In the performance of the Agreement the Supplier shall conform to all relevant environmental standards, guidelines and codes of practice and shall take all practical steps in the design of the work to be performed under the Agreement to minimise any risk to the environment.

37 ENVIRONMENTAL REQUIREMENTS

The Supplier shall:

37.1 when working on the College's' Premises, the Supplier shall aim to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and

37.2 comply fully with any other acts, orders, regulations and codes of practice relating to environmental regulations, which may apply in the performance of this Agreement including (if applicable) the requirements of the Waste Electrical and Electronic Equipment Regulations 2006 (WEEE).

38 **TERMINATION**

38.1 Without prejudice to any other rights or remedies which the parties may have, the College may terminate the Contract without liability to the Contractor immediately on giving notice to the Contractor if:

38.1.1 the Contractor fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 working days after being notified in writing to make such payment; or

38.1.2 the Contractor commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 working days of the Contractor being notified in writing of the breach; or

38.1.3 the Contractor repeatedly breaches any of the terms of the Contract 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 of the Contract; or

38.1.4 the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

38.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Contractor ; or

38.1.6 a floating charge holder over the assets of that Contractor has become entitled to appoint or has appointed an administrative receiver; or

38.1.7 a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor ; or

38.1.8 a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

38.1.9 there is any infringement by the Contractor of any Health and Safety Regulation; or

38.1.10 the Contractor has offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward for doing or not doing anything in relation to the Contract; or

38.1.11 there has been notice of discrimination of any kind received by the Contractor which has not been rectified in a reasonable time or, the Contractor has not complied with all current legislation relating to discrimination; or

38.1.12 any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 38.1.4 to clause 38.1.11 (inclusive); or

38.1.13 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

38.1.14 there is a change of control of the Contractor (as defined in section 574 of the Capital Allowances Act 2001); o

38.1.15 this Contract is terminated by virtue of a "declaration of ineffectiveness" under the Public contracts Regulations 2006 (as **amended).**

38.2 Where the Contract has been terminated under 38.1.15, the College shall make any payments due on a quantum meruit basis only and the College shall not be liable for any damages or compensation as a result of such a declaration.

38.3 In the event that a court makes a declaration of ineffectiveness, the College shall promptly notify the Contractor. The parties agree that the provisions of Clauses 38.3.1 to 38.3.4 (inclusive) shall apply as from the date of receipt by the Contractor of the notification of the declaration of ineffectiveness.

38.3.1 The declaration of ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either party prior to or after such declaration of ineffectiveness.

38.3.2 As from the date of receipt by the Contractor of the notification of the declaration of ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the College shall reasonably determine an appropriate cessation plan with the object of achieving:

(i) an orderly and efficient cessation of the Services and/or supply of Goods or (at the College's request) a transition of the Services to the College or such other entity as the College may specify; and

(ii) minimal disruption or inconvenience to the College

(iii) in accordance with the provisions of Clauses 38.3.1 to 38.3.4 (inclusive) and to give effect to the terms of the declaration of ineffectiveness.

38.3.3 Upon agreement, or determination by the College, of the cessation plan the parties will comply with their respective obligations under the cessation plan.

38.3.4 The College shall pay the Contractor's reasonable costs in assisting the College in preparing, agreeing and complying with the cessation plan. Such costs shall be based on any comparable costs or charges agreed as part of this Contract or as otherwise

reasonably determined by the College. Provided that the College shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to Clause 38.1.15.

38.4 On termination of the Contract for any reason, the Contractor shall immediately deliver to the College:

38.4.1 all In-put Material and all copies of information and data provided by the College to the Contractor for the purposes of the Contract. The Contractor shall certify to the College that it has not retained any copies of In-put Material or Contractor information or data, except for one copy which the Contractor may use for audit purposes only and subject to the confidentiality obligations in clause 13; and

38.4.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the College (to the extent that they have not already done so by virtue of clause 11.2), who shall be entitled to enter the premises of the Contractor to take possession of them.

38.5 If the Contractor fails to fulfil its obligations under clause 38.4 then the College may enter the Contractor's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Contractor shall be solely responsible for their safe keeping**.**

39 LAW

This Agreement shall be subject to English Law and the jurisdiction of the English courts.